

FARGO CITY COMMISSION AGENDA
Monday, March 21, 2022 - 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, March 7, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. 2nd reading and final adoption of an Ordinance Rezoning a Certain Parcel of Land Lying in Golden Valley Sixth Addition; 1st reading, 3/7/22.
- 2. Receive and file communication from Justin Nachatilo regarding the appeal of the decision of the Civil Service Commission and set a date for a hearing.
- 3. Site Authorizations for Games of Chance:
 - a. Plains Art Museum at District 64.
 - b. Red River Human Services Foundation at Northern, Sickies and The Elks Lodge #260.
- 4. Applications for Games of Chance:
 - a. Jaxson Thomsen Benefit for a raffle on 4/29/22; Public Spirited Resolution.
 - b. GiGi's Playhouse Fargo for a raffle on 3/25/22.
 - c. Fargo Youth Hockey Association for a raffle board on 3/24/22.
- 5. Memorandum of Offer to Landowner for Easement (Temporary Construction Easement) with Swanson Health Products, Inc. (Project No. FM-14-71).
- 6. Encroachment Agreement with Sterling Properties LLLP at 415 7th Street South.
- 7. Bid award for the following Projects:
 - a. No. SR-22-A1.
 - b. No. UR-21-A1.
- 8. Bid advertisement for the following Projects:
 - a. No. SL-22-A
 - b. No. TN-22-B.
- 9. Repealing of the COVID-19 Pandemic Overtime Temporary Employment Policy effective 3/29/22.
- 10. Subrecipient Agreement with Churches United for the Homeless.

- Page 2
1. Application for Appropriation from Civil Asset Forfeiture Fund to purchase camera replacements as presented.
 12. Direct the City Attorney to prepare amendments to Fargo Municipal Code Section 1-0305.
 13. Memorandum of Understanding with the Bureau of Alcohol, Tobacco, Firearms and Explosives.
 14. Agreement for Services with Valley Veterinary Hospital, P.C.
 15. 2022 budget adjustment for the acquisition of 2414 7th Avenue North.
 16. Authorization Application for Airborne Vector Control.
 17. Extension of the Mosquito Spraying Agreement with Airborne Vector Control, LLC for 2022 (RFP18018).
 18. Bid award for Lawn Maintenance Services (RFP22037).
 19. Change Order with Bailey Nurseries, Inc. for additional trees in 2022 (RFP21122).
 20. Extension of the Services Agreement Landscape Maintenance Services with Valley Green and Associates for one additional year (RFP19075).
 21. Contract and bond for Project No. PR-22-A1.
 22. Bills.
 23. Contract and bond for Improvement District No. PR-22-G1.
 24. Create the following Improvement Districts
 - a. No. AN-22-A.
 - b. No. BN-22-J.
 - c. No. BN-22-K.
 - d. No. PR-22-C.

REGULAR AGENDA:

25. **RESIDENT COMMENTS (Fargo residents will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments. Residents who would like to address the Commission, whether virtually or in person, must sign-up at FargoND.gov/VirtualCommission).**
26. ***Public Input Opportunity* PUBLIC HEARINGS - 5:15 pm**
 - a. Application to transfer a Class "ABH-Limited" Alcoholic Beverage License for Advanced Hospitality d/b/a Expressway Suites to be located at 4303 17th Avenue South, due to an ownership change.
 - b. Legacy I Seventh Addition (6155 24th Street South); approval recommended by the Planning Commission on 1/4/22:
 1. Growth Plan Amendment on the proposed Legacy I Seventh Addition from low-to-medium density or medium-to-high density residential to commercial.

2. Zoning Change from SR-4, Single-Dwelling Residential to GO, General Office with a C-O, Conditional Overlay.
 3. 1st reading of rezoning Ordinance.
 4. Plat of Legacy I Seventh Addition.
- c. Renewal Plan and Development Agreement for Tax Increment Financing District No. 2021-04 (1418 1st Avenue North); continued from the 3/7/22 Regular Meeting.
27. 2nd reading and final adoption of an Ordinance Relating to Term Limits for City Commission Members; 1st reading, 3/7/22:
 - a. Resolution Proposing Term Limits Ordinance to Voters.
 - b. Receive and file Sample Ballot Language regarding the term limits Ordinance.
28. Recommendation for proceeding with the revising of plans for the 32nd Avenue South Reconstruction Project.
29. Discussion regarding the Wildlife Management Program.
30. Recommendation for an Interim Finance Director.
31. Resolution to Show Support for Ukraine's fight for Democracy.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310 at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.

26a

NOTICE OF HEARING

Application for Alcoholic Beverage License Transfer

Notice is hereby given that the Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing in the City Commission Room, City Hall, on Monday, March 21, 2022 at 5:15 o'clock p.m. to consider an application for transfer. A transfer requested of a Class "ABH-Limited" Alcoholic Beverage License for Advanced Hospitality d/b/a Expressway Suites to be located at 4303 17 Ave S, due to ownership change.

Any interested person may appear and will be heard.

City Auditor's Office
(March 2, 2022)

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Transfer Application – Expressway Inn

DATE: March 11, 2022

The following application for a liquor license transfer was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: ABH-Limited Limited Service Hotels for Managers Specials
Business Name: Expressway Inn
Location: 4303 17th Avenue South
Applicants: Sharyl Isaak, Victor Isaak, Grant Isaak

Being no significant concerns, the Liquor Control Board voted to approve the transfer of a Class ABH-Limited alcoholic beverage license to Advanced Hospitality d/b/a Expressway Inn, due to death of owner. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the transfer of a Class ABH-Limited alcoholic beverage license to Advanced Hospitality d/b/a Expressway Inn, transfer due death of owner.



Fargo Police Department

To: Chief David Zibolski

From: Sergeant Carlos Nestler *CN*

Date: March 4, 2022

RE: Liquor License Application for Transfer of Ownership (Expressway Suites)

Application for a Class "ABH-Limited" Alcoholic Beverage License Transfer for Advanced Hospitality d/b/a Expressway Suites to be located at 4303 17th Avenue South, Fargo, due to ownership change.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I examined the applicants' credit reports and public records criminal background.

The following information was discovered through this investigation:

Isaak, Sharyl K. - Owner

Criminal History-

A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (<https://chs.state.mn.us/>) showed no criminal activity.

Credit History-

Sharyl K. Isaak's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.



Fargo Police Department

Isaak, Victor Lewis – Owner

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov) and Minnesota public records (<https://chs.state.mn.us/>) showed no criminal activity.

Credit History- Victor L. Isaak's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Isaak, Grant Wallace – Owner/Manager

Criminal History- A search of Fargo Police Department criminal records, North Dakota public records (publicsearch.ndcourts.gov), Minnesota public records (<https://chs.state.mn.us/>) showed no public records of criminal convictions.

Credit History- Grant W. Isaak's credit report was reviewed. There are no prior bankruptcies, past due accounts or debts turned over to collections.

Investigation Notes

This application is for a Class "ABH-Limited" Alcoholic Beverage License (authorizes license may be issued to persons engaging in "on-sale" of beer and wine or hosting "manager's specials" solely for guests or patrons of extended stay and limited service hotels or motels) for Advanced Hospitality d/b/a Expressway Suites to be located at 4303 17th Avenue South, due to ownership change.

I spoke to Sharyl Isaak by phone on March 3rd, 2022. The ownership change is due to the death of Sharyl's husband. Sharyl has been listed as an owner of the business and now her sons, Victor Isaak and Grant Isaak, join her in ownership. Sharyl told me Grant has been the manager and will continue to be the manager of the hotel.



Fargo Police Department

I noticed on page 3 of the application that Sharyl had initialed the nine items, but Grant and Victor did not. They all three printed their names and signed at the bottom of the sheet. I emailed a copy of page 3 of the application to Sharyl. She said she would have Victor and Grant initial the nine items and send the document back to me. I will attach the additional document to the application.

The investigation into the criminal and credit history of the applicants did not find any current issues related to criminal activity or any problems with their credit.

Business Location

Expressway Suites is located at 4303 17th Avenue South, Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Hilton Garden Inn, Porter Creek Hardwood Grill, Delta Hotels, Johnny Carino's and Lucky's 13 Pub.

Conclusion

This background investigation is being forwarded for your review and recommendation to the City of Fargo Liquor Control Board.



Approved



APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

Legal Company Name: Advanced Hospitality
(Must match State of North Dakota registration name)

DBA Name: Expressway Suites

Business location address: 4303 17th Ave S. Fargo ND 58103

Mailing address: Same

Business E-mail address: expresswayfargo@gmail.com

Local Manager E-mail address: Same

Best Contact Phone number: (701) 239-4303

Anticipated Date of Opening: respy due to ownership due to death

Please contact the Auditor's Office at 701-241-1301 or 241-8108 to determine the appropriate License Classification Type that would fit your business model.

The following section to be completed by City Staff:

Date Received by Auditor's Office: 1/27/2022

Investigations Fee Paid (\$250) ☐ Yes ☐ No Date Paid: ☐ Check/CC # 1100105

Class of License: AS4-LTD Transfer: ☒ Yes ☐ No

Police Department review completed by: ☐ Date: ☐
(Attached recommendation report):

☐ Approval Recommendation

☐ Denial Recommendation

☐
Chief of Police

☐
Date

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City of Fargo Staff Report			
Title:	Legacy I 7 th Addition	Date: Updated:	12/28/21 3/17/22
Location:	6155 24 th Street South	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Lot 1, Block 7, Legacy I 4 th Addition		
Owner(s)/Applicant:	Gerald Eid / Jason Eid	Engineer:	None
Entitlements Requested:	Zoning Change (from SR-4, Single-Dwelling Residential to GO, General Office with a conditional overlay (C-O) to restrict land uses); Growth Plan Amendment (amend the 2003 Growth Plan from "Residential Area— Lower-to-Medium Density or Medium-to-High Density" to "Office" for the subject property.) Major Subdivision (plat of Legacy I 7th Addition , a replat of Lot 1, Block 7, Legacy I 4 th Addition)		
Status:	City Commission Public Hearing: March 21, 2022		
Existing		Proposed	
Land Use: Undeveloped		Land Use: Daycare and office	
Zoning: SR-4, Single-Dwelling Residential		Zoning: GO, General Office	
Uses Allowed: SR-4 Allows detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities		Uses Allowed: GO – General Office. Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off premise advertising signs, and commercial parking with a conditional overlay (C-O) to restrict some land uses.	
Maximum Density Allowed: SR-4 allows a maximum of 12.1 dwelling unit per acre		Maximum Building Coverage Allowed: 55% GO does not allow residential uses	

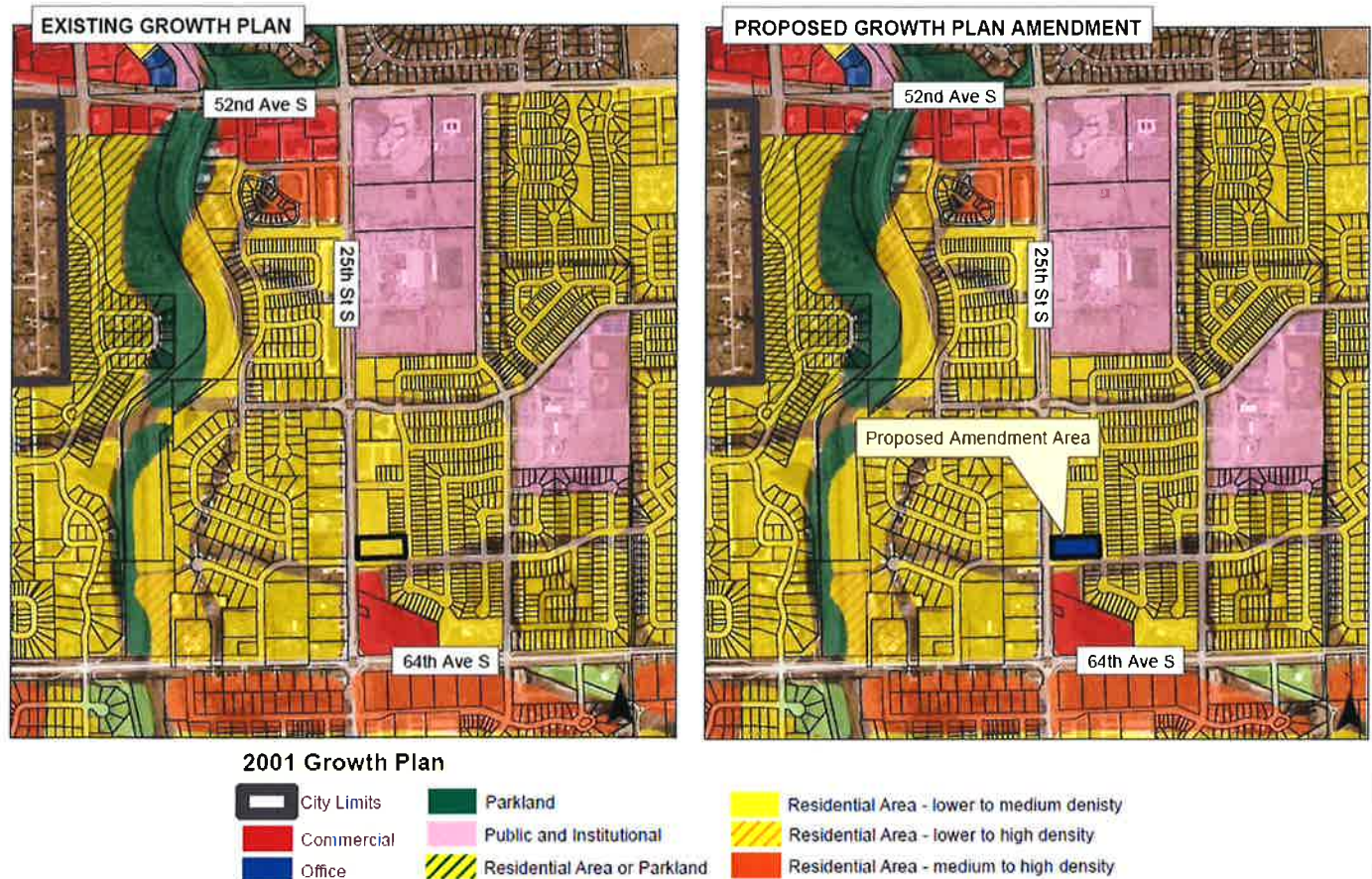
Proposal:
<p>The applicant requests three entitlements:</p> <ol style="list-style-type: none"> 1. A zoning change from SR-4, Single-Dwelling Residential to GO, General Office with a conditional overlay (C-O) to restrict some land uses; and 2. A growth plan amendment to amend the 2003 Growth Plan from "Residential Area— Lower-to-Medium Density or Medium-to-High Density" to "Office" for the subject properties. 3. A major subdivision to be known as Legacy I 7th Addition, a replat of Lot 1, Block 7, Legacy I 4th Addition, which removes the negative access easement along 62nd Avenue South and dedicates as right of way certain easements along 25th Street South that were acquired after the original 25th Street South right of way was dedicated. <p><i>NOTE: This subdivision was originally proposed as a minor subdivision. However, during the course of staff review, staff determined that certain easements along the west side of the property that had been acquired subsequent to the development of the 25th Street South needed to be dedicated as right of way for 25th Street South on this subdivision plat, thus turning it into a major subdivision.</i></p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p>(continued on next page)</p>

Surrounding Land Uses and Zoning Districts:

- North: P/I, Public and Institutional, undeveloped; SR-4, Single-Dwelling Residential, single-dwelling residences
- East: SR-4, single-dwelling residences
- South: NC, Neighborhood Commercial, undeveloped; SR-4, single-dwelling residences
- West: SR-2, Single-Dwelling Residential with single-dwelling residences and religious institution

Area Plans:

The subject property is located within the 2001 (amended in 2003) Growth Plan. This plan designates the subject property as "Residential Area—Lower to Medium Density" and "Residential Area—Medium to High Density." This land use designation includes the current SR-4, Single-Dwelling Residential zoning. The applicant proposes to amend this plan to designate the subject properties as "Office," which includes the proposed GO, General Office zoning. Findings for the proposed growth plan amendment are below.



Context:

Schools: The subject property is located within the Fargo School District, specifically within the Bennett Elementary, Discovery Middle and Davies High schools.

Neighborhood: The subject property is located within the Bennett neighborhood.

Parks: Legacy Park, located at 6297 22nd Street South, is approximately 750 feet southeast of the subject property and provides amenities of basketball court, grill, picnic tables, playground, recreational trails and a shelter.

Pedestrian / Bicycle: An off-road multi-use trail is adjacent to the west side of the subject property, within the right of way for 25th Street South, which is a component of the metro area bikeways system.

Bus Route: The subject property is not near a MATBUS route.

Staff Analysis:

PLAT

The replat of the existing lot eliminates the negative access easement (NAE) along 62nd Avenue South that was originally applied with the Legacy I 4th Addition plat. Planning and Engineering staff have determined that this NAE is no longer required. The plat also dedicates as right of way certain easements along 25th Street South that were acquired after the original 25th Street South right of way was dedicated.

ZONE CHANGE

The applicant's main goal for the zone change is to find the minimum zone in which a day care that serves more than 13 children can be built without any additional entitlement; such a daycare cannot be built in the current SR-4 zoning. A conditional use permit would be required for such a day care in an MR (multi-dwelling) zone. The GO, General Office zone, would allow this use. This zone does not allow many of the uses that area allowed in the LC, Limited Commercial and GC, General Commercial zones. The conditional overlay (see below) further restricts the land uses available in the GO zone.

CONDITIONAL OVERLAY

The zone change includes a conditional overlay that will regulate signs, prohibit certain land uses on the property, and provide design standards for the development of the site. The conditional overlay is appropriate for this area that is along an arterial street adjacent to a residential neighborhood. A copy of the draft conditional overlay is attached.

GROWTH PLAN AMENDMENT:

In order to allow the proposed GO, General Office zoning, the underlying growth plan, the 2001 (amended in 2003) Growth Plan, must be amended to change the land use designation for this property from Medium to High Density Residential to Office. Findings for the growth plan amendment are below.

GROWTH PLAN AMENDMENT NEIGHBORHOOD MEETING

Pursuant to Land Development Code Section 20-0905.E, a public open house is required for a proposed growth plan amendment. The intent of this open house is to allow residents and property owners in the area an opportunity to meet with the developer to review and comment on this proposed growth plan amendment. This meeting was held on Tuesday, December 7th, 2021 at City Hall. Property owners within a 300 foot radius of the subject property were notified by mail of this meeting. There were no attendees at this meeting other the developer and Planning Department staff.

Growth Plan Evaluation Criteria: Section 20-0905(H) of the LDC states that the Planning Commission and City Commission shall consider whether the Growth Plan is consistent with and serves to implement adopted plans and policies of the city.

The 2007 Growth Plan sets forth the following criteria that should be used to evaluate any proposed growth plan amendment:, including amendments to previous growth plans:

1. **Is the proposed change consistent with surrounding land uses, both existing and future?**
Surrounding land uses include SR-4-zoned single dwelling lots as well as large undeveloped lots with P/I, Public/Institutional and NC, Neighborhood Commercial, zoning. It is the developer's intent to provide neighborhood serving office and daycare uses at this location located along an arterial street.
(Criteria Satisfied)
2. **Does the proposed change involve a street alignment or connection? If so, how does this change affect the transportation system and the land uses in the surrounding area, both existing and future.**
No. The required right of way dedication does not alter the alignment of the existing 25th Street South.
(Criteria Satisfied)

3. **How does the proposed change work with the larger area in terms of land use balance and other factors that could influence the proposed change? Are there physical features or developments in the vicinity that make the change positive or negative for the City and the area in general?**

Some nearby parcels with commercial zoning have been developed with residential instead of commercial uses. The nearest developed neighbor-serving area is approximately 0.75 miles north. Allowing this parcel to change to a land use designation and a zone that allows office uses facilitates the developer's intent to provide neighborhood serving office and daycare uses at this location located along an arterial street that may be underserved by such uses.

(Criteria Satisfied)

4. **How does the proposed change impact the long term sustainability of the city? Does the change contribute to or detract from the walkability and livability of the city?**

The proposed development will provide neighborhood services to the surrounding residents. Regarding walkability, existing portions of sidewalks, including the 10-foot wide multi-use trail on the south side of the subject property, will be completed as part of this project

(Criteria Satisfied)

Zoning --- Section 20-0906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

1. **Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**

There is no error in the zoning map. The property was zoned to the current zoning of SR-4 in 2005 (Legacy I 4th Addition). This 1.89 acre lot could accommodate 22 dwelling units, perhaps as attached condominiums or rental units. The property has not been developed in the 16 years since the original approval, suggesting that the original plan for this lot as a residential development is not practical at the present time. Thus, staff believes it is reasonable that alternative plan to develop this property can be considered.

(Criteria Satisfied)

2. **Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?**

Yes. The project site fronts on public rights of way that provide access and utility services.

(Criteria Satisfied)

3. **Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?**

Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. The proposed conditional overlay prohibits certain uses and applies design standards intended to mitigate the intensity of development on the subject property. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received no public comment. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity **(Criteria Satisfied)**

4. **Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?**

The LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo."

The project meets some of the goals of infill development stated in the Go2030 Comprehensive Plan:

- the subject property is already served by supporting infrastructure;

- the project will increase the mix of uses and amenities in the area; and,
- by extending and completing existing sidewalks, the project will increase walkability.

The 2001/2003 Growth plan designation of “office” proposed for this site states *“This designation was also used in areas that may need to function as stand-alone sites from an access and circulation standpoint. Generally an office building, office campus, or public institution can function as a stand alone development, as opposed to commercial land uses, which often benefit from the synergy created when they are adjacent to roadways that also provide access to other commercial developments”*

The growth plan is proposed to be amended as noted above.

The major intended tenant of the property is a daycare accommodating more than 13 children; such a facility is not allowed in SR (single-dwelling residential) zones and not allowed without a conditional use permit in MR (multi-dwelling residential) zones.

(Criteria Satisfied)

Major Subdivision

The LDC stipulates that the following criteria is met before a major subdivision plat can be approved

- 1. Section 20-0907 of the LDC stipulates that no major subdivision plat application will be accepted for land that is not consistent with an approved Growth Plan or zoned to accommodate the proposed development.**

The subject property is currently zoned SR-4, Single-Dwelling Residential. The proposed zone change would rezone the entire property to GO, General Office with a conditional overlay (C-O) to accommodate the proposed office development. The proposed growth plan amendment would designate the land use of the subject property as “Office,” which would include the GO, General Office zone. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has not received any communication from the neighborhood. **(Criteria Satisfied)**

- 2. Section 20-0907.4 of the LDC further stipulates that the Planning Commission shall recommend approval or denial of the application and the City Commission shall act to approve or deny, based on whether it is located in a zoning district that allows the proposed development, complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The proposed subdivision has been reviewed by the city’s Planning, Engineering, Public Works, Inspections, and Fire Departments, which have determined the subdivision meets the standards of Land Development Code Article 20-06 (Subdivision Design and Improvements). The proposed zoning district of GO, General Office will allow the development of a daycare serving more than 13 children as well as neighborhood-serving uses. This zoning aligns with the proposed amendment to the 2001 Growth Plan to designate the future land use on this property as “Office.” Additionally, this project meets some of the goals of infill development identified in Fargo’s Go2030 Comprehensive Plan. **(Criteria Satisfied)**

- 3. Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

This subdivision is a major subdivision only because it dedicates existing easements as right of way. No internal streets are created and no additional public improvements are required. Staff has determined that no amenities plan is required. Any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles

(Criteria Satisfied)

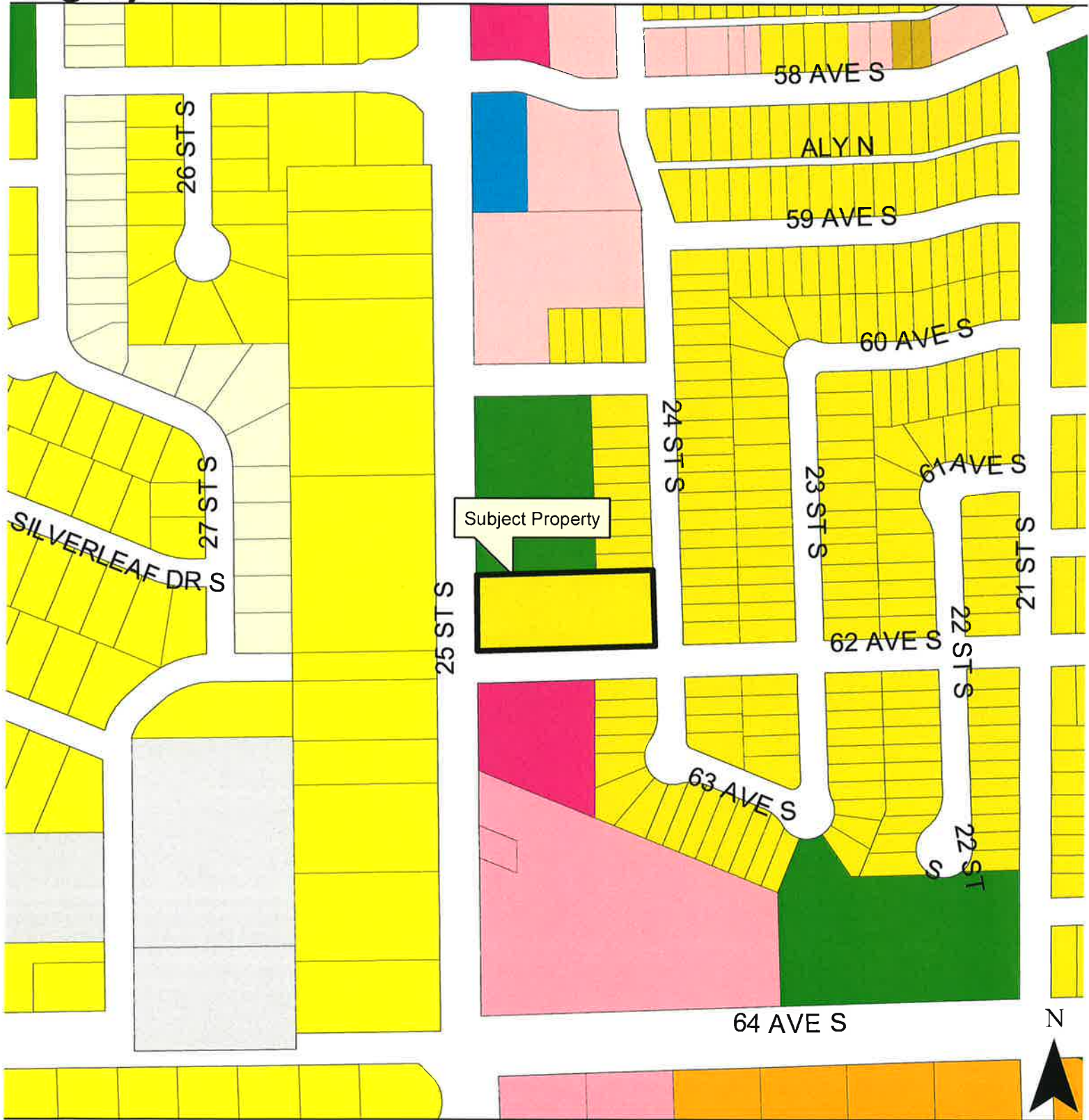
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Staff Recommendation:
<p>Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the rezoning Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading and move to approve the proposed 1) zoning change from SR-4, Single-Dwelling Residential to GO, General Office with a conditional overlay (C-O); 2) growth plan amendment to amend the 2001 (amended 2003) Growth Plan from "Residential Area—Lower-to-Medium Density or Medium-to-High Density"" to "Office" for the subject properties; and 3) Legacy I 7th Addition subdivision as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2003 Growth Plan, Section 20-0906.F (1-4), 20-0905.H (1-4), the standards of Article 20-06, and all other applicable requirements of the LDC."</p>
Planning Commission Recommendation: January 4, 2022
<p>At the January 4, 2022 Planning Commission hearing, by a vote of 6-0 with two Commissioners absent and three Commission seats vacant, that Commission moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed 1) zoning change from SR-4, Single-Dwelling Residential to GO, General Office with a conditional overlay (C-O); 2) growth plan amendment to amend the 2001 (amended 2003) Growth Plan from "Residential Area—Lower-to-Medium Density or Medium-to-High Density"" to "Office" for the subject property; and 3) Legacy I 7th Addition subdivision as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2001 Growth Plan, Section 20-0906.F (1-4), 20-0905.H (1-4), the standards of Article 20-06, and all other applicable requirements of the LDC.</p>
Attachments:
<ol style="list-style-type: none"> 1. Zoning map 2. Growth Plan Map 3. Location map 4. Preliminary plat 5. Draft conditional overlay

Plat (Major), Zone Change (SR-4 to GO), and Growth Plan Amendment (Residential to Office)

Legacy I 7th Addition

6155 24th Street S



Legend

AG	LC	MHP	SR-2
DMU	MR-1	NC	SR-3
GC	MR-2	P/I	SR-4
GO	MR-3	UMU	SR-5
			City Limits

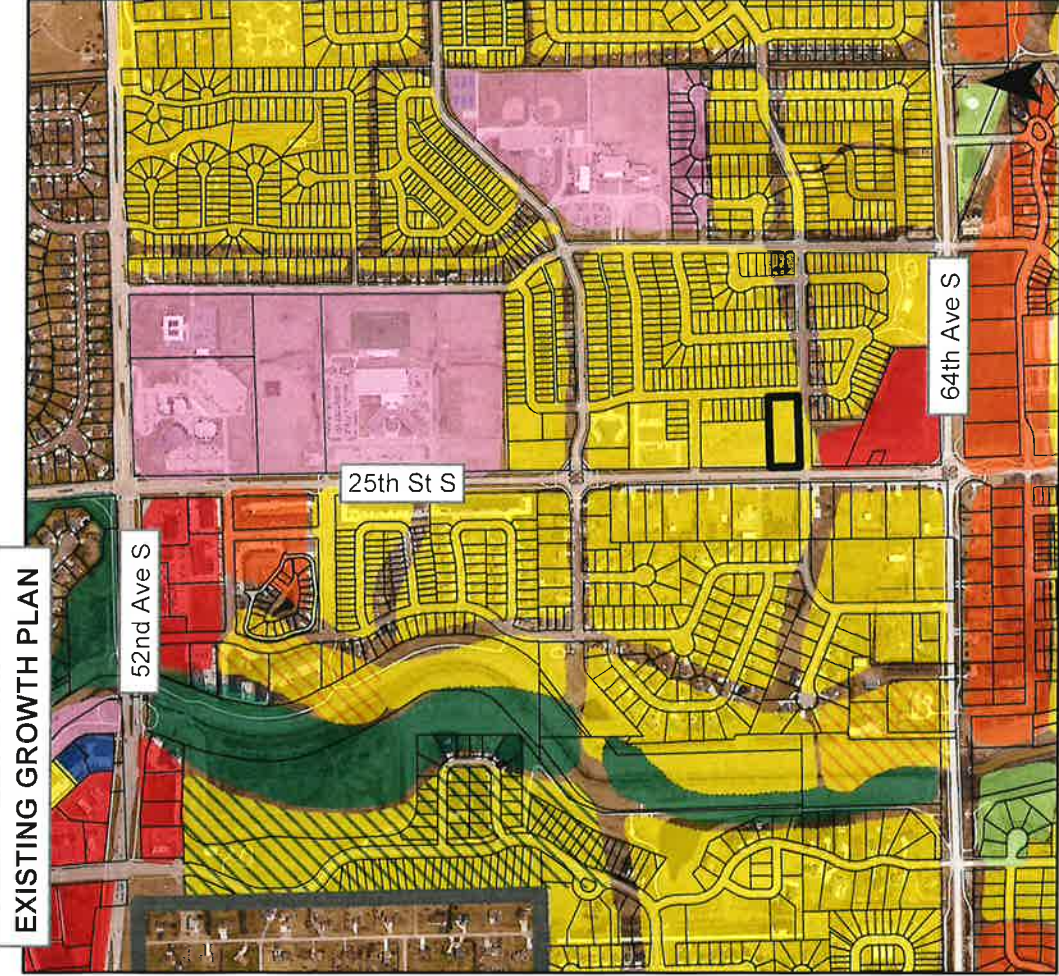
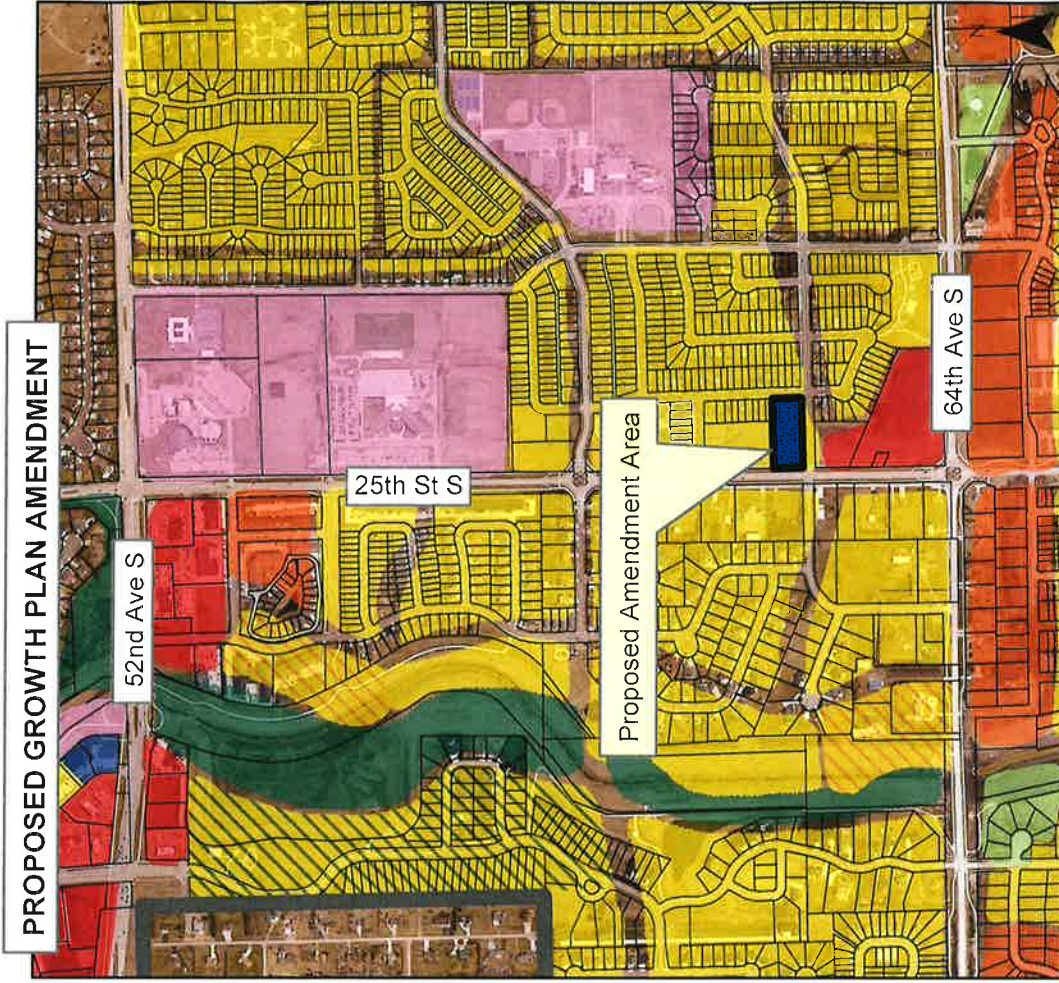
300

Feet

Growth Plan Amendment (Residential to Office)

Legacy I 7th Addition

6155 24th Street South



2001 Growth Plan

- City Limits
- Commercial
- Office
- Parkland
- Public and Institutional
- Residential Area or Parkland
- Residential Area - lower to medium density
- Residential Area - lower to high density
- Residential Area - medium to high density

Fargo Planning Commission
January 4, 2022



Plat (Major), Zone Change (SR-4 to GO), and Growth Plan Amendment (Residential to Office)

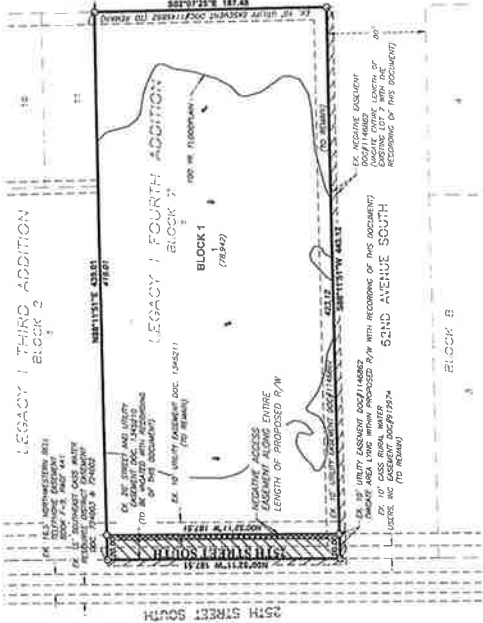
Legacy I 7th Addition

6155 24th Street S



LEGACY I SEVENTH ADDITION

TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
A REPLAT OF LOT 1, BLOCK 7 OF LEGACY I FOURTH ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
(A MAJOR SUBDIVISION)

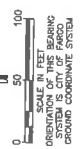


NOTES

1. GROUND DISTANCES ARE SHOWN AND ARE IN TERMS OF U.S. SURVEY FEET.
2. NEGATIVE ACCESS EASEMENT, AS NOTED ON THE PLAT OF LEGACY I SEVENTH ADDITION, IS AN EASEMENT DEDICATED AS PART OF THE RIGHT-OF-WAY DEDICATION WHICH EASEMENT GRANTS DIRECT VEHICULAR ACCESS TO A LOT OR LOTS FROM A LOT OR LOTS ADJACENT TO SUCH STREET OR HIGHWAY. THE NEGATIVE ACCESS EASEMENT IS NOT ADJACENT TO ANY CERTAIN LOT OR LOTS, BUT IS A LINE CONTIGUOUS WITH THE BOUNDARY OF THE ADJACENT LOT OR LOTS.
3. PART OF THIS PLAT FALLS IN FLOODPLAIN ZONE 'X' ACCORDING TO THE FEMA FIRM MAP 07032C0201D WITH AN ANTICIPATED FLOOD ELEVATION OF 2005. THE BASE FLOOD ELEVATION IN THIS AREA IS 802.3' (NAD83). ADJACENT TO THE FIRM, CONTOUR INFORMATION SHOWN IS DERIVED FROM CITY OF FARGO 2017 CONTOUR DATA.
4. BENCHMARK SEVEN INDIAN LOCATED IN THE NORTHWEST CORNER OF 25TH STREET SOUTH AND 62ND AVENUE SOUTH, BM-30000, ELEVATION = 899.85 (NAD83).

LEGEND

- Easement
- Right-of-Way
- Plat Lot Areas
- Plat Boundary Line
- Plat Block Lines
- Existing Easement Line
- Existing Boundary Line
- Existing Ground Contour
- 100 FT. FLOODPLAIN
- Easement Access Easement - IS BE INCORPORATED WITH THE RECORDING OF THIS DOCUMENT
- NEW NEGATIVE ACCESS EASEMENT ALONG 25TH STREET SOUTH



OWNER'S CERTIFICATE:
KNOW ALL PERSONS BY THESE PRESENTS: That Gerald D. Eld, being the owner of land in that part of the Southwest Quarter of Section 1, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being more particularly described as follows:
Lot 1, Block 7 of LEGACY I FOURTH ADDITION to the City of Fargo, according to the recorded plat thereof on file and of record in the Office of the County Recorder, Cass County, North Dakota.
Containing 82,692 square feet, more or less.

Said owner of the above described property, have caused the same to be surveyed and platted as "LEGACY I SEVENTH ADDITION" to the City of Fargo, Cass County, North Dakota and hereby dedicate 25th Street South and negative access easement as shown on said plat to the Public.

OWNER:
Gerald D. Eld

Gerald D. Eld
Gerald D. Eld

State of North Dakota }
County of Cass } ss

On this 14th day of February, 2022, before me personally appeared Gerald D. Eld, Owner, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he executed the same on behalf of the corporation.

Notary Public: *Joshua J. Nelson*

KPH LING
SURVEY
9530 39TH ST. S.
FARGO, ND 58104
701-499-7978

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT
I, Joshua J. Nelson, Professional Land Surveyor, under the laws of the State of North Dakota, do hereby certify that this plat is a true and correct representation of the survey of said subdivision, that the monuments for the guidance of future surveys have been located or placed in the ground as shown.

Dated this 14th day of February, 2022

Joshua J. Nelson
Joshua J. Nelson, PLS
Professional Land Surveyor
Registration No. LS-27292

State of North Dakota }
County of Cass } ss

On this 14th day of February, 2022, appeared before me, Joshua J. Nelson, known to me to be the person whose name is subscribed to the above certificate and did acknowledge to me that he executed the same as his own free act and deed.

Notary Public: *Joshua J. Nelson*



FARGO CITY COMMISSION APPROVAL

Approved by the Board of Commissioners and ordered filed this ___ day of ___ 20__

Timothy J. Mahoney
Mayor
Attest: Steven Sprague, City Auditor
State of North Dakota }
County of Cass } ss

On this ___ day of ___ 20__ before me, a notary public in and for said county, personally appeared Timothy J. Mahoney, Mayor, and Steven Sprague, City Auditor, known to me to be the persons described in and who executed the same as a free act and deed.

Notary Public: _____

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

Approved by the City Engineer this ___ day of ___ 20__

Brenda E. Derrig, P.E.
City Engineer

State of North Dakota }
County of Cass } ss

On this ___ day of ___ 20__ before me, a notary public in and for said county, personally appeared Brenda E. Derrig, City Engineer, known to me to be the person described in and who executed the same as a free act and deed.

Notary Public: _____

CITY OF FARGO PLANNING COMMISSION APPROVAL

Approved by the City of Fargo Planning Commission this ___ day of ___ 20__

Rocky Schneider
Planning Commission Chair

State of North Dakota }
County of Cass } ss

On this ___ day of ___ 20__ before me, a notary public in and for said county, personally appeared Rocky Schneider, Planning Commission Chair, known to me to be the person described in and who executed the same as a free act and deed.

Notary Public: _____

DRAFT CONDITIONAL OVERLAY

28 December 21

Lot 1, Block 1, Legacy I 7th Addition

1. This Conditional Overlay is intended to provide for a higher quality of design than is afforded by the City of Fargo Land Development Code regarding future commercial and residential development within the described property.
2. All primary buildings shall be constructed or clad with materials that are durable, economically-maintained, and of a quality that will retain their appearance over time, including but not limited to natural or synthetic stone; brick; stucco; integrally-colored, textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; EIFS (exterior insulation finishing system), glass, metal panes similar to 'Aluco Bond' and synthetic panels similar to 'Trespa'. Natural wood or wood paneling shall not be used as a principal exterior wall material, but durable synthetic materials with the appearance of wood may be used. Horizontal metal lap siding and vertical metal batten shall be allowed on residential and commercial structures but shall not exceed 75% of the building elevation for residential structures and 50% for commercial.
3. All building façades greater than 150 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the façade and extending at least 20 percent of the length of the façade. No uninterrupted length of any façade shall exceed 150 horizontal feet. An articulated façade would emphasize elements on the face of a wall including change in setback, materials, roof pitch or height.
4. Ground floor façades that face public streets shall have arcades, display windows, entry areas, awnings, variation of material type that projects at least 6" in plane or other such features along no less than 50 percent of their horizontal length. If the façade facing the street is not the front, it shall include similar features and/or landscaping features in scale with the façade that shall include a variety of trees and shrubs types and sizes within fifteen feet of the building facade.
5. Flat roofs and rooftop equipment, such as HVAC units, shall be totally screened when viewing angle is from the finish floor elevation, measured 150' from the exterior wall or provided with a parapet or screening wall half the height of the equipment, including but not limited to the back of the structure.
6. Loading and/or services areas/facilities shall be located at the side or rear of buildings and screened from public streets by structures and/or landscaping, with a minimum opacity of 50%.
7. Dumpsters and outdoor storage areas must be completely screened from view. Collection area enclosures shall contain permanent walls on at least three (3) sides. The fourth side shall incorporate a metal gate to visually screen the dumpster or compactor; however, if the service side does not face any public right of way or residentially zoned property the metal gate shall not be required.
8. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be designed to provide direct access and connections to and between the following:
 - a) the primary entrance or entrances to each commercial building, including pad site buildings.

- b) any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development.
- c) parking areas or structures that serve such primary buildings.
- d) connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network.
- e) any public sidewalk system along the perimeter streets adjacent to the commercial development.
- f) where practical and appropriate, adjacent land uses and developments, including but not limited to residential developments, retail shopping centers, office buildings.

9. The cumulative open space (green space) of each property shall consist of at least 10% of the total property acreage.

10. On-premise signs

- a) Every structure and complex should be designed with a precise concept for adequate signing. Provisions for sign placement, sign scale in relationship with the building, and sign readability should be considered in developing the signing concept.
- b) Signage size, color, and form should complement the architecture of the building and should not compete with or become the focal point of the building form.
- c) Signage must not extend vertically or horizontally past the building.
- d) Signage text should be legible from arterial streets; use of recognizable imagery can be substituted for legibility of text. Sign should not be larger than necessary to achieve this legibility from the street.
- e) Sign surface areas must be less than 10 percent of the building surface
- f) Signs should be located above first floor doors and windows, on awnings, or adjacent to building entrances if mounted on a wall.
- g) Corporate logos should be appropriately scaled.
- h) Separate pedestrian-oriented signs should be provided when pedestrians cannot see the façade signage which is oriented to the street.
- i) Each development site should be appropriately signed to give directions to loading and receiving areas, visitor parking, and other special areas.
- j) Multi-tenant buildings or developments may have one monument or ground mounted sign per street frontage listing all of the tenants. Monument or ground-mounted signs for individual businesses in multi-tenant buildings or developments are prohibited. Monument-type signs are the preferred alternative for business identification whenever possible.
- k) Signs should advertise a specific building or business, not products, trademarks, or special events.
- l) Window signs used for shop fronts or mixed-use buildings are permitted, provided that the aggregate total of all window signs for each business shall not exceed 25% of its respective window area.

11. Prohibited Signage

- a) Pole or pylon sign--A sign that is mounted a freestanding pole or pylon placed in the ground.
- b) Billboards – a sign advertising products not made, sold, used or served on the premises displaying the sign or that conveys an informational or ideological message.
- c) Fence Signs – a sign affixed in any way to or painted on a fence

- d) Off Site Sign – a sign directing attention to a business commodity, service, product, or property not located, sold or conducted on the same property or site as that on which the sign is located.
 - e) Pennant – a flag tapering to a point usually strung together by line or rope.
 - f) Portable Sign – any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.
 - g) Roof Sign – a sign erected above the highest point of a flat roof or mounted on a gable pitched or hipped roof
 - h) Vehicular Sign – a sign or business identification affixed to any vehicle, including but not limited to automobiles, trucks, tractors, trailers, wagons, carts, manufactured homes and similar vehicles and their accessories.
 - i) Exterior Window Sign – means any sign painted or applied to the interior/exterior of the window of a tenant
12. The following uses in the GO, General Office zone are prohibited:
- a) Commercial Parking
 - b) Off-premise advertising

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2663

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN LEGACY I SEVENTH ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in the proposed Legacy I Seventh Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on January 4, 2022; and,

WHEREAS, the rezoning changes were approved by the City Commission on March 21, 2022,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

All of Legacy I Seventh Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "SR-4", Single-Dwelling Residential, District to "GO", General Office, District with a "C-O", Conditional Overlay, District as follows:

1. This Conditional Overlay is intended to provide for a higher quality of design than is afforded by the City of Fargo Land Development Code regarding future commercial and residential development within the described property.

2. All primary buildings shall be constructed or clad with materials that are durable, economically-maintained, and of a quality that will retain their appearance over time, including, but not limited to, natural or synthetic stone; brick; stucco; integrally-colored, textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; EIFS (exterior insulation finishing system), glass, metal panes similar to 'Aluco Bond'

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 and synthetic panels similar to 'Trespa'. Natural wood or wood paneling shall not be used
2 as a principal exterior wall material, but durable synthetic materials with the appearance
3 of wood may be used. Horizontal metal lap siding and vertical metal batten shall be
4 allowed on residential and commercial structures but shall not exceed 75 percent of the
5 building elevation for residential structures and 50 percent for commercial structures.

6 3. All building façades greater than 150 feet in length, measured horizontally, shall
7 incorporate wall plane projections or recesses having a depth of at least three (3) percent
8 of the length of the façade and extending at least 20 percent of the length of the façade.
9 No uninterrupted length of any façade shall exceed 150 horizontal feet. An articulated
10 façade would emphasize elements on the face of a wall including change in setback,
11 materials, roof pitch or height.

12 4. Ground floor façades that face public streets shall have arcades, display windows,
13 entry areas, awnings, variation of material type that projects at least six (6) inches in
14 plane or other such features along no less than 50 percent of their horizontal length. If the
15 façade facing the street is not the front, it shall include similar features and/or
16 landscaping features in scale with the façade that shall include a variety of trees and
17 shrubs types and sizes within fifteen (15) feet of the building façade.

18 5. Flat roofs and rooftop equipment, such as HVAC units, shall be totally screened when
19 viewing angle is from the finish floor elevation, measured 150 feet from the exterior wall
20 or provided with a parapet or screening wall half the height of the equipment, including
21 but not limited to the back of the structure.

22 6. Loading and/or services areas/facilities shall be located at the side or rear of buildings
23 and screened from public streets by structures and/or landscaping, with a minimum
opacity of 50 percent.

7. Dumpsters and outdoor storage areas must be completely screened from view.
Collection area enclosures shall contain permanent walls on at least three (3) sides. The
fourth side shall incorporate a metal gate to visually screen the dumpster or compactor;
however, if the service side does not face any public right of way or residentially zoned
property the metal gate shall not be required.

8. Separate vehicular and pedestrian circulation systems shall be provided. An on-site
system of pedestrian walkways shall be designed to provide direct access and connections

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

to and between the following:

- a) the primary entrance or entrances to each commercial building, including pad site buildings;
- b) any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development;
- c) parking areas or structures that serve such primary buildings;
- d) connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network;
- e) any public sidewalk system along the perimeter streets adjacent to the commercial development; and
- f) where practical and appropriate, adjacent land uses and developments, including but not limited to residential developments, retail shopping centers, office buildings.

9. The cumulative open space (green space) of each property shall consist of at least ten (10) percent of the total property acreage.

10. On-premise signs.

- a) Every structure and complex should be designed with a precise concept for adequate signing. Provisions for sign placement, sign scale in relationship with the building, and sign readability should be considered in developing the signing concept.
- b) Signage size, color, and form should complement the architecture of the building and should not compete with or become the focal point of the building form.
- c) Signage must not extend vertically or horizontally past the building.
- d) Signage text should be legible from arterial streets; use of recognizable imagery can be substituted for legibility of text. Sign should not be larger than necessary to achieve this legibility from the street.
- e) Sign surface areas must be less than ten (10) percent of the building surface.
- f) Signs should be located above first floor doors and windows, on awnings, or adjacent to building entrances if mounted on a wall.
- g) Corporate logos should be appropriately scaled.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- h) Separate pedestrian-oriented signs should be provided when pedestrians cannot see the façade signage which is oriented to the street.
- i) Each development site should be appropriately signed to give directions to loading and receiving areas, visitor parking, and other special areas.
- j) Multi-tenant buildings or developments may have one monument or ground mounted sign per street frontage listing all of the tenants. Monument or ground-mounted signs for individual businesses in multi-tenant buildings or developments are prohibited. Monument-type signs are the preferred alternative for business identification whenever possible.
- k) Signs should advertise a specific building or business, not products, trademarks, or special events.
- l) Window signs used for shop fronts or mixed-use buildings are permitted, provided that the aggregate total of all window signs for each business shall not exceed 25 percent of its respective window area.

11. Prohibited Signage.

- a) Pole or pylon sign--A sign that is mounted a freestanding pole or pylon placed in the ground.
- b) Billboards – a sign advertising products not made, sold, used or served on the premises displaying the sign or that conveys an informational or ideological message.
- c) Fence Signs – a sign affixed in any way to or painted on a fence.
- d) Off Site Sign – a sign directing attention to a business commodity, service, product, or property not located, sold or conducted on the same property or site as that on which the sign is located.
- e) Pennant – a flag tapering to a point usually strung together by line or rope.
- f) Portable Sign – any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.
- g) Roof Sign – a sign erected above the highest point of a flat roof or mounted on a gable pitched or hipped roof.
- h) Vehicular Sign – a sign or business identification affixed to any vehicle, including but not limited to automobiles, trucks, tractors, trailers, wagons, carts, manufactured homes and similar vehicles and their accessories.
- i) Exterior Window Sign – means any sign painted or applied to the interior/exterior of the window of a tenant.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

12. The following uses in the GO, "General Office", District are prohibited:

- a) Commercial Parking; and
- b) Off-premise advertising.

Section 3. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

Section 4. This ordinance shall be in full force and effect from and after its passage and approval.

(SEAL)

Timothy J. Mahoney, M.D., Mayor

Attest:


Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

MEMORANDUM

260

TO: Fargo City Commission

FROM: Jim Gilmour, Director of Strategic Planning and Research 

DATE: March 2, 2022

SUBJECT: Renewal Plan for site of warehouse fire

I drafted a Renewal Plan for the redevelopment of 1418 1st Avenue North. The project is to demolish and cleanup the site of a warehouse destroyed by fire in 2020 and build a 90-unit apartment building with enclosed parking.

Construction work would begin in 2022 and be completed by the end of 2023.

The developer is requesting \$1.3 million in Tax Increment Financing (TIF) to demolish the remaining building, cleanup the site, address any poor soil conditions and pay a portion of the land cost. TIF funds would also be used to construct NP Avenue between 14th and 14½ Street North. The estimated annual TIF income is ~\$168,000 a year and the length of the TIF district would be ~11 years following the completion of the project. The benefit to the developer would be about 9 of the 11 years the TIF is in place, with the first two years going to the developer, the next years 4-5 years being prorated between the developer and the City and the final ~5 years going to the developer.

City financial adviser PFM reviewed the project and stated, **"The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance."**

A public hearing on the Renewal Plan and Developer Agreement is part of the review process. One of the purposes of the hearing is to provide potential competitors an opportunity to comment if they feel the agreement would result in unfair competition.

Recommended Motion:

Approve the Resolution adopting the Renewal Plan and a Developer Agreement with J-Street Properties to provide TIF funds for the project.

Attachments

1. Resolution
2. Renewal Plan
3. Financial "But For" Report
4. Form of Developer Agreement pending final legal review

October 20, 2021

Jim Gilmour, Dir. of Strategic Planning & Research
City of Fargo
225 4th St. N.
Fargo, ND 58102

RE: TIF Application
J-Street Flats
Fargo, ND

Mr. Gilmour:

On behalf of J-Street Properties, LLC, we offer this Application for Tax Increment Financing Assistance for our proposed J-Street Flats Multi-Family project to be located at 1418 1st Ave. N., the former Woodchuck building which was damaged beyond repair by a recent fire.

Contact Information

Kevin Bartram
505 N. Broadway
Fargo, ND 58102
(701) 235-5563
kbartram@mbapc.com

Mark Bjornstad
1666 1st Ave. N.
Fargo, ND 58102
(701) 540-6608
mark@drekkerbrewing.com

General Information

- Owner
J-Street Properties, LLC
- Project Location
1418 1st Ave N & 19 14 ½ St N
Fargo, North Dakota
- Project Description & Conceptual Plans
90 unit, 4-story multi-family project with enclosed parking for 92 vehicles plus additional surface parking for 21 vehicles. Project will also include a request to pave 14-½ Street and part of NP Avenue, both of which are currently gravel surfaces.

Conceptual plans are attached.

- Proposed Schedule
Begin construction in Spring, 2022 with completion scheduled for Summer 2023. Demolition of the existing on-site structure will begin in late Winter depending on the status of this TIF Application.

Project Financials & Financing

- Developer & Ultimate Owner of Property
J-Street Properties, LLC
- Type of Project
Multi-Family site re-zoned to DMU with conditional overlay
- Dollar request of TIF assistance
Approximately \$1.25M
- 10 year Proforma
Proforma is currently being finalized
- Total Project Cost
Approximately \$14.75M
- Hard Capital Costs
Approximately \$12.5M
- Contributed Equity
Approximately \$3.0M
- Loan Amounts with Terms
Final loan package still being finalized.
Anticipated terms are 3.50 – 3.75% fixed for 5 years with a 20 year term.
- Number of Housing Units
(57) 1-BR Units-various plans
(24) 2-BR Units-various plans
(9) 3-BR Units-various plans
(90) units Total
- SF of Commercial Space
None; project includes enclosed parking for 92 vehicles on 1st floor and amenity spaces (fitness, community room, lounge spaces)
2nd – 4th floors and a 5th floor roof terrace.
- Proposed Rents
1-BR units - \$ 950 - \$1,075/mo.
2-BR units - \$1,250 - \$1,350/mo.
3-BR units - \$1,500 - \$1,700/mo.

Rents include all utilities, parking costs & in unit laundry.
- Additional Revenues
Commissions from TV / Internet provider of \$2 – 4/ unit/mo.

- Expenditures
 - Land Cost \$ 1,075,000
 - Construction Cost 11,850,000
 - Architecture/Engineering 800,000
 - Financing 200,000
 - Developer Fee 500,000
 - Contingency 325,000
 - \$ 14,750,000

- Extraordinary Costs
 - Land \$ 1,075,000
 - Building Demolition \$ 333,500
 - Environmental Unknown (Phase 1 underway)
 - Public Works \$ 125,000

- * All of these costs are subject to revision depending on details from the Phase 1 & possible Phase 2 environmental reports.

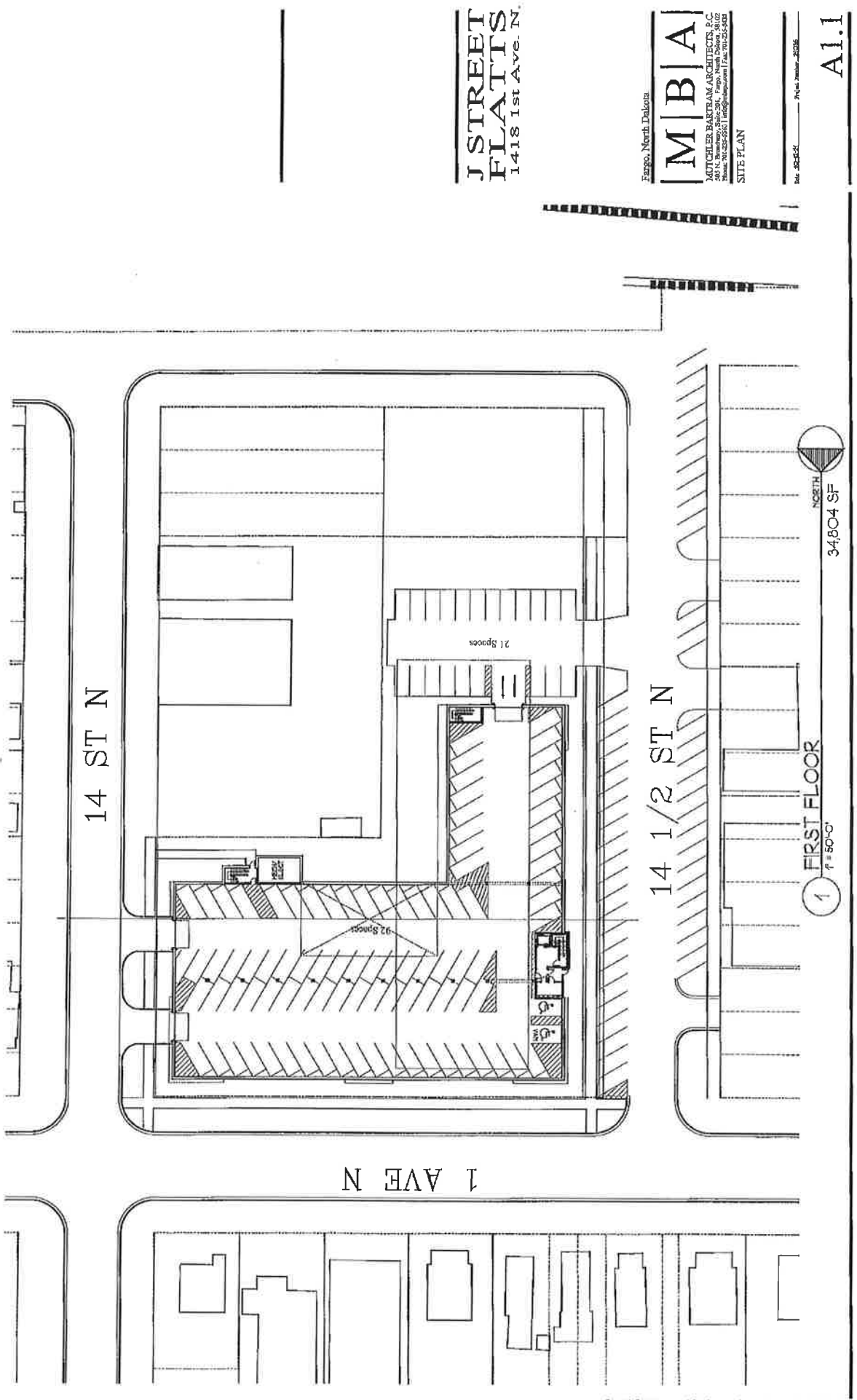
Please let us know if there are any questions or if additional information is required.

Sincerely,



Kevin J. Bartram

KJB/tjs

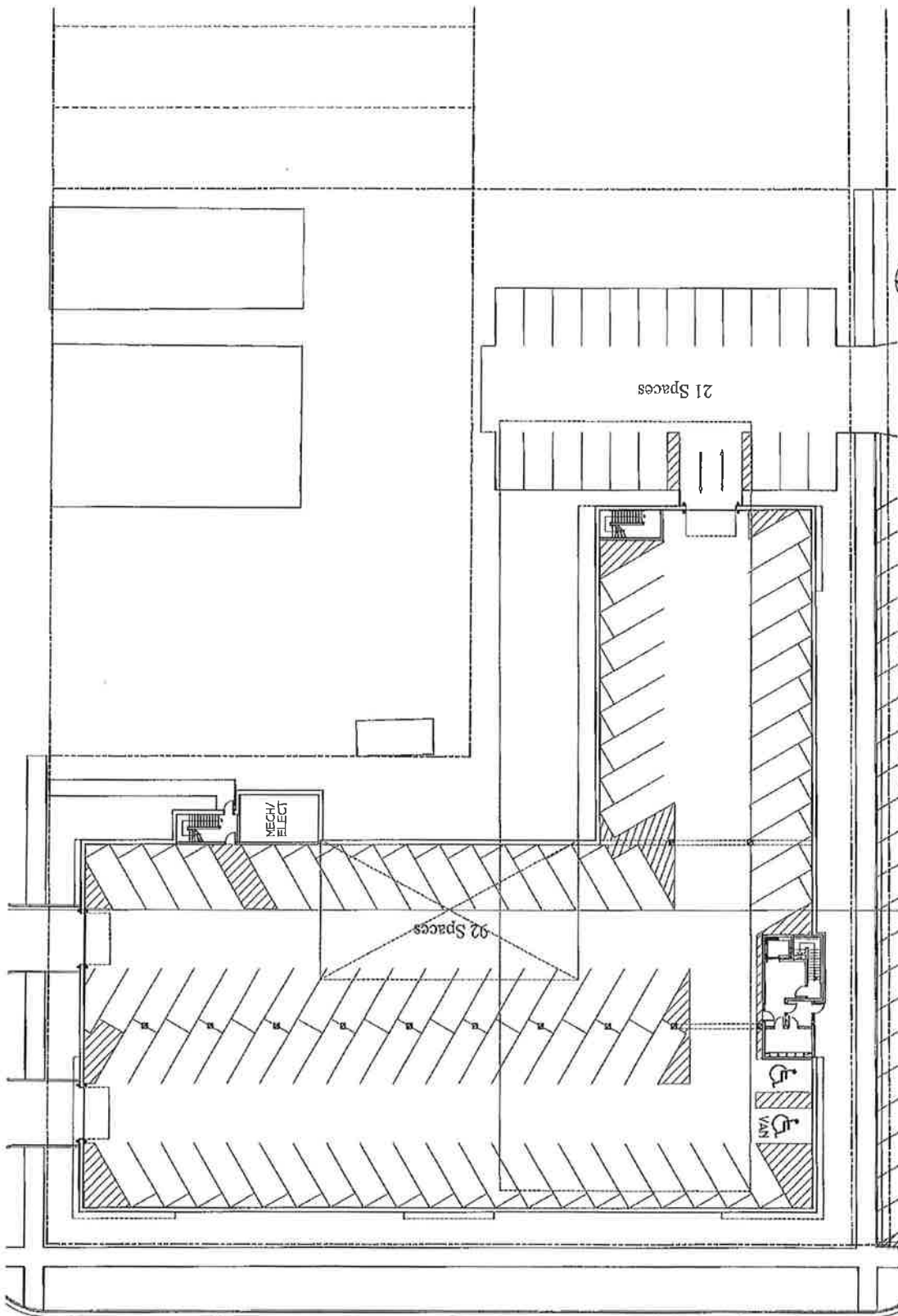


J STREET
FLATTS
1418 1st Ave. N.

Fargo, North Dakota
M|B|A
MITCHELL BARTRAM ARCHITECTS P.C.
348 N. Broadway, Suite 204, Fargo, North Dakota 58102
Phone: (701) 785-1111
Fax: (701) 785-1111
SITE PLAN

Dec. 2004
Print Name: JMB

A1.1



J STREET
FLATTS
1418 1st Ave. N.

Fargo, North Dakota
M|B|A
MITCHELL BARTRAM ARCHITECTS, P.C.
505 N. Broadway, Suite 201, Fargo, North Dakota, 58102
Phone: 701-225-5551 Fax: 701-225-5552
FIRST FLOOR PLAN



34804 SF

1 FIRST FLOOR
1" = 30'-0"

A3.1

J STREET
FLATS
1418 1ST AVE. N.

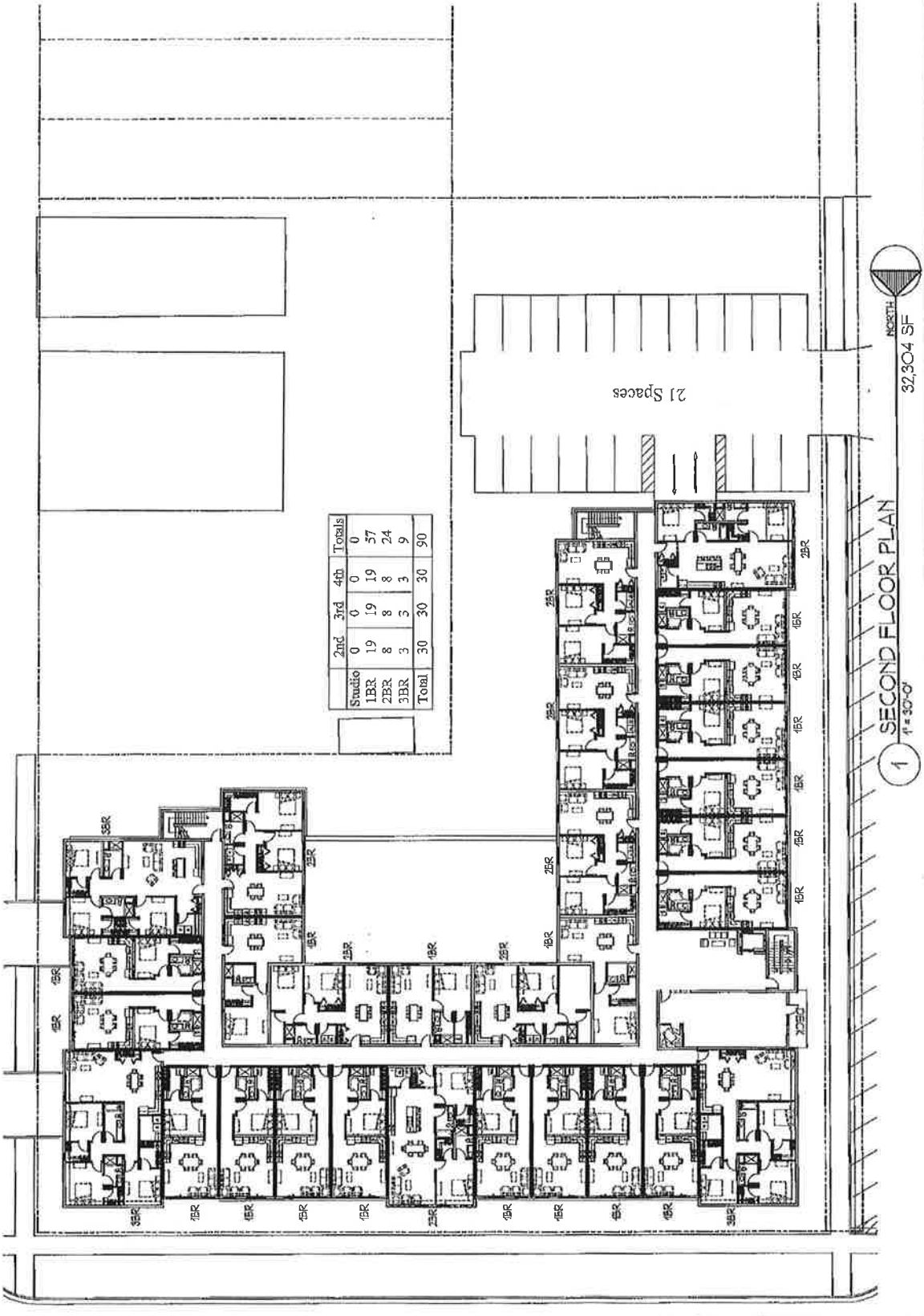
FARGO, NORTH DAKOTA

M|B|A
MITCHELL BARTHELM ARCHITECTS, P.C.
505 N. Broadway, Suite 201, Fargo, North Dakota, 58102
Phone: (701) 785-1111 Fax: (701) 785-1112
www.mbaarchitects.com

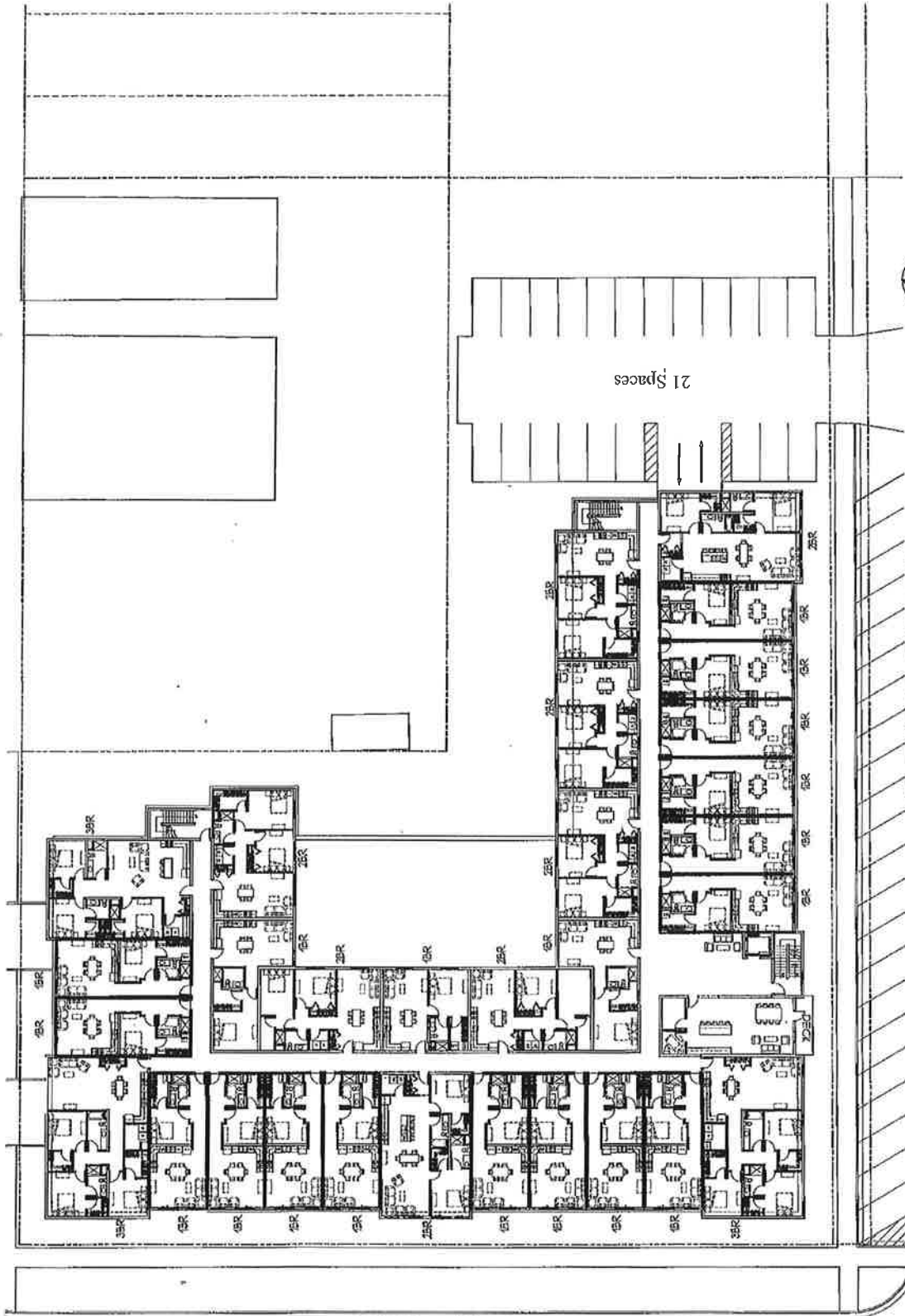
SECOND FLOOR PLAN

Scale: 1/8" = 1'-0"

A3.2



	2nd	3rd	4th	Totals
Studio	0	0	0	0
1BR	19	19	19	57
2BR	8	8	8	24
3BR	3	3	3	9
Total	30	30	30	90



J STREET
FLATTS
1418 1ST AVE. N.

FARGO, NORTH DAKOTA

M|B|A

MUTILES BARTRAM ARCHITECTS, P.C.
202 N. Broadway, Suite 201, Fargo, North Dakota 58102
Phone: 701.233.5555 | Fax: 701.233.5555

THIRD FLOOR PLAN

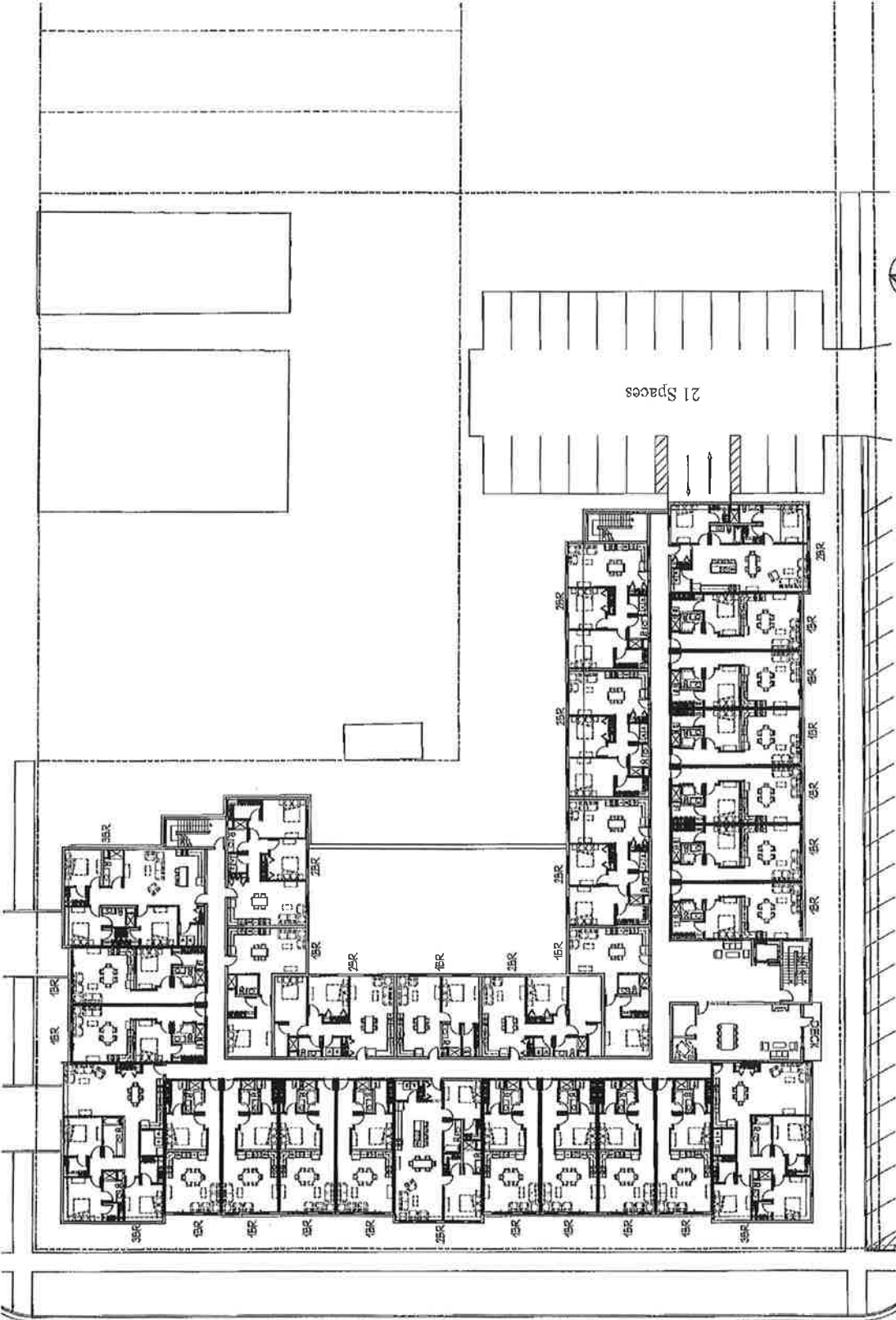
Rev: 05-2017 Project Name: JSCB

A3.3



32,304 SF

1 THIRD FLOOR PLAN
1" = 30'-0"



J STREET
FLATS
1418 1ST AVE. N.

FARGO, NORTH DAKOTA

M B A

MITCHELL BARTHAM ARCHITECTS, P.C.
200 N. 1ST AVE. SUITE 200
FARGO, ND 58102-1001
Phone: 701.225.2141 Fax: 701.225.2142
www.mbaarchitects.com

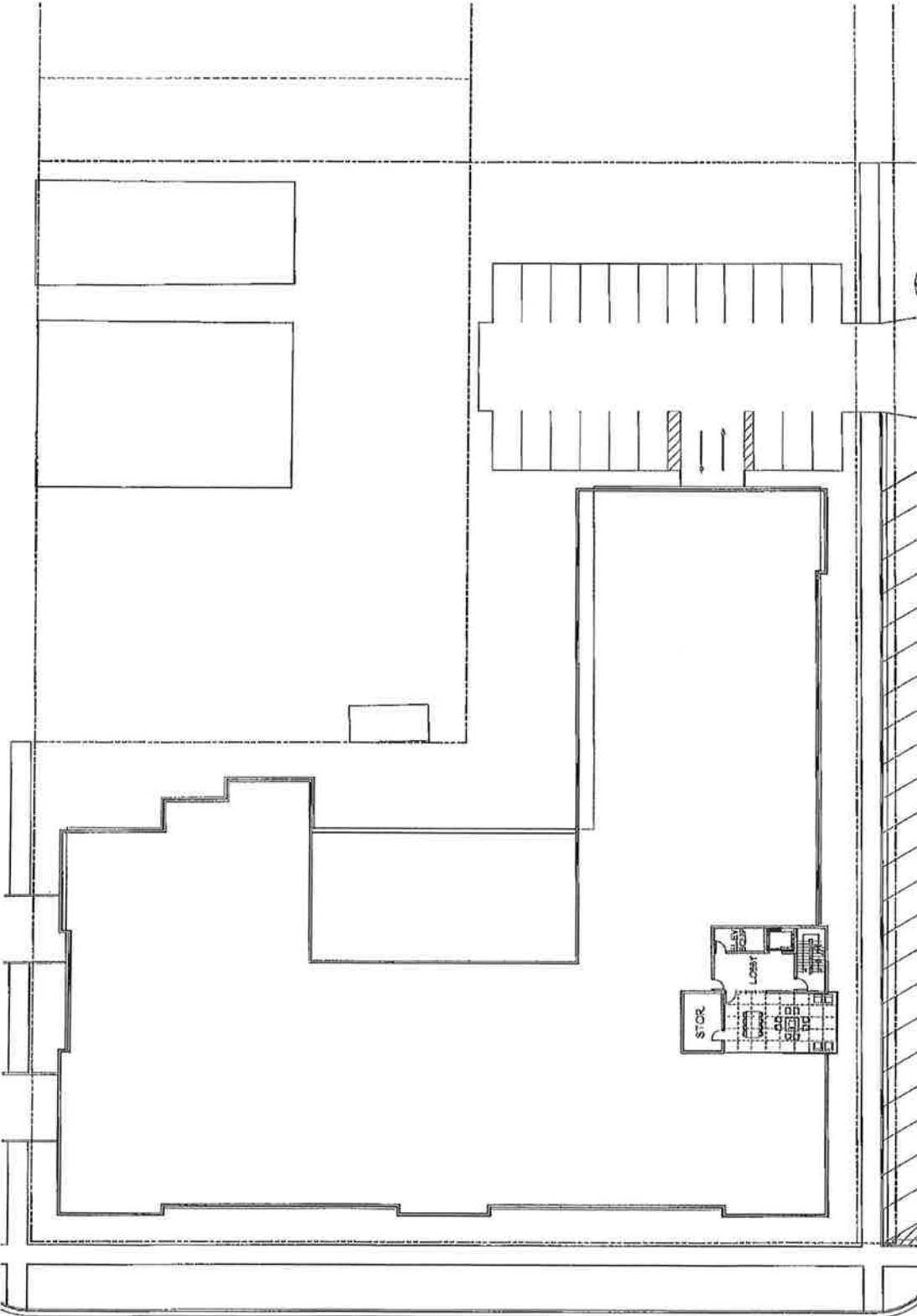
FOURTH FLOOR PLAN

Job: 150-0011 Project Name: 150-0011

A3.4

32,304 SF
NORTH
1/8" = 3'-0"

FOURTH FLOOR PLAN



J STREET
FLATS
1418 1ST AVE. N.

FARGO, NORTH DAKOTA

M|B|A

MUTCHLER, BARTRAM ARCHITECTS, P.C.
250 N. Broadway, Suite 201, Fargo, North Dakota, 58102
Phone: (701) 725-2201 | Fax: (701) 725-2202

FIFTH FLOOR PLAN

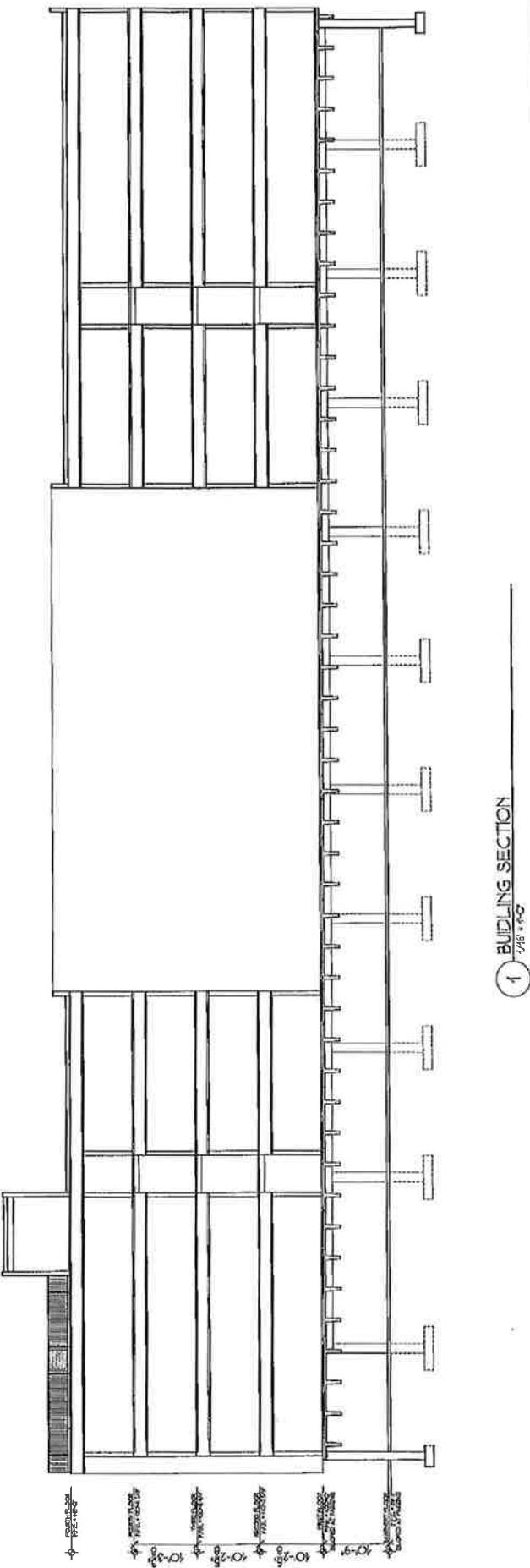
Rev. 05/2011 Project Name: J Street



FIFTH FLOOR PLAN

1" = 30'-0"

A3.4



RESOLUTION
BOARD OF CITY COMMISSIONERS OF THE
CITY OF FARGO

TAX INCREMENT FINANCING DISTRICT 2021-04

Commissioner _____ moved for approval of the following:

WHEREAS, Certain areas within the City are in need of redevelopment in order to prevent further deterioration, to encourage investment and to preserve property values; and

WHEREAS, The Board of City Commissioners desires to avail itself of the power and authority granted by Chapter 40-58 NDCC.

NOW, THEREFORE, BE IT RESOLVED, By the Board of City Commissioners as follows:

1. That one or more slum or blighted areas, or areas consisting of industrial or commercial property, or a combination of those areas of properties, exist in the City of Fargo.
2. That the development, rehabilitation, conservation or redevelopment, or a combination thereof, of the area contained within the Renewal Plan for Tax Increment Financing District No. 2021-04, is necessary in the interest of public health, safety, morals or welfare of the residents of the City of Fargo and will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the rehabilitation or redevelopment of the development area by private enterprise.
3. That there are blighted areas within the area contained within the Renewal Plan with deteriorated conditions that discourage redevelopment. The Renewal Area, as defined in the Renewal Plan, is blighted due to the presence of these conditions have substantially impaired the growth of the City, and have slowed the provision of appropriate redevelopment in this area. As a result, the Board of City Commissioners finds that a blighted condition exists in the said area.
4. That the area designated as the Renewal Plan for Tax Increment Financing District No. 2021-04 is appropriate for a development project.
5. That such development, rehabilitation, conservation or redevelopment of the area contained in the Renewal Plan for Tax Increment Financing District No. 2021-04 requires the powers and authority granted in Chapter 40-58 NDCC.
6. That the Renewal Plan for Tax Increment Financing District No. 2021-04 is hereby officially adopted by the Board.

7. That a Developer Agreement be prepared in regard to the Tax Increment Financing.
8. That the appropriate staff be directed to request the County Auditor and Treasurer to compute, certify and remit tax increments resulting from the development or renewal of the area in accordance with the plan and any modifications thereof, and that the County Auditor and Treasurer shall do so in accordance with this section.

Said motion was seconded by Commissioner _____ and, upon call of the roll, the motion carried with Commissioner(s) _____ not being present, Commissioners _____ voting aye, Commissioners _____ voting nay and Commissioner(s) _____ abstaining and the motion therefore being declared carried.

RENEWAL PLAN
TAX INCREMENT FINANCING DISTRICT NO. 2021-04
CITY OF FARGO, NORTH DAKOTA
NOVEMBER 2021

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RENEWAL PLAN FOR TAX INCREMENT DISTRICT NO. 2021-04

Subsection 1.1. Definitions

For the purposes of the Renewal Plan, the following terms shall have the meanings specified below, unless the context otherwise requires:

"City" means the City of Fargo, a municipal corporation under the laws of the State of North Dakota.

"City Commission" or "Commission" means the Fargo City Commission.

"Comprehensive Plan" means the City's Go2030 Comprehensive Plan, including the objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and water within the City as and when such plan is adopted and finalized.

"County" means Cass County, North Dakota.

"Development" means the construction of new buildings, structures or improvements; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures or improvements; the acquisition of equipment; and the clearing and grading of land on industrial or commercial property in the Renewal Area.

"Renewal Area" means the property described in Subsection 1.4 of this Plan.

"Renewal Plan" or "Plan" means this Plan adopted by the Commission for the Renewal Area.

"State" means the State of North Dakota.

"Tax Increment Financing Act" or "TIF Act" means North Dakota Century Code, Section 40-58-20, as amended.

"Tax Increment Bonds" means any general obligation or revenue tax increment bonds or notes issued by the City to finance the public costs associated with the TIF District as stated in this Plan, or any obligations issued to refund the Tax Increment Bonds.

"Tax Increment Financing District" or "TIF District" means Tax Increment Financing District No. 2021-04.

"Urban Renewal Law" means North Dakota Century Code, Chapter 40-58.

Subsection 1.2. Statutory Authority

The creation of the Renewal Area and the establishment of Tax Increment Financing District No. 2021-04 are authorized by the Urban Renewal Law. Specifically the creation of the Renewal Area is authorized under North Dakota Century Code, Sections 40-58-01.1(7) and (14), which provide that the local governing body may designate industrial or commercial property, a slum or

blighted area, or combination of these properties as appropriate for a development or renewal project.

The Urban Renewal Law provides that communities develop a "workable program" for the use of public and private resources to facilitate the development of industrial or commercial properties, eliminate and prevent the development or spread of slums and urban blight, encourage needed urban rehabilitation, provide for the redevelopment of slum and blighted areas, or undertake these activities or other feasible municipal activities as may be suitably employed to achieve the objectives of the workable program. North Dakota Century Code, Section 40-58-04.

Subsection 1.3. Statement of Public Purpose

In adopting the Renewal Plan for TIF District No. 2021-04, the City Commission intends to make the following findings:

- (a) The Renewal Area includes a blighted area.

Factual basis: This Renewal Area is blighted due to the presence of remnants of a warehouse that was destroyed by fire, which substantially impairs the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

- (b) The Renewal Area is the site of remains of a warehouse that was destroyed by fire. A portion of the building is still standing and foundations remain on the site.

Factual basis: The Renewal Area is considered blighted as described in (a) above. Blighted areas are eligible for renewal.

- (c) The Renewal Area is appropriate for a development or renewal project.

Factual basis: The Renewal Area was recently rezoned to allow for housing and other commercial land uses.

- (d) The site is vacant and existing housing will not be affected.

Factual basis: There was no housing on the site in the recent past. The redevelopment will include new housing units.

- (e) The Plan conforms to the Comprehensive Policy Plan for the City as a whole.

Factual basis: The proposed development is consistent with the goals that are embodied in the Go2030 Comprehensive Plan. Specifically, the Fargo Go2030 Comprehensive Plan supports infill and density within areas that are already developed, serviced with utilities and protected by a flood resiliency strategy. The promotion of infill development is the number two-ranked priority of Go2030. The proposed use of the property is consistent with zoning and may encourage additional redevelopment adjacent to the site. The proposed development will use existing infrastructure and other infrastructure can be added as needed.

Subsection 1.4. Description of Renewal Area

The Renewal Area is located two blocks west of the downtown. The site is approximately one and a half acres as legally described in Appendix A. A map of the Renewal Area is attached as Appendix B.

A zoning map of the Renewal Area is attached as Appendix C. Adjacent land uses are primarily commercial and industrial. There is some housing in the vicinity of the site.

The proposed project will be multi-family housing.

The redevelopment plan is attached as Appendix E.

Subsection 1.5. Land Acquisition, Development, Demolition and Removal of Structures, Redevelopment or Public Improvements

The Development of the Renewal Area includes the following activities:

Land Acquisition – The estimated cost is \$1,075,000.

Building Demolition and Hazardous Material Removal – This estimate is for environmental cleanup and demolition. The estimate is \$500,000.

Public Works Improvements – This is the cost for needed improvements for infrastructure to serve the site. This includes streets, streetlights, storm sewer and other public facilities. The estimate is \$950,000.

Administrative/TIF Fees – Other Tax Increment costs include the administrative costs. There are estimated to be \$50,000 in administrative costs for the City of Fargo.

These costs represent estimated costs for planning purposes, and may be different when this plan is implemented with a Development Agreement. The Development Agreement costs will be determined after a review by City financial advisers. The maximum allowed costs will be specified in the Development Agreement. Based on the proposed development, the present value of TIF revenue is ~\$1.3 million over 15 years.

Subsection 1.6. Land Use Attributes – TIF District

- (a) *Zoning or Planning Changes.*
The Renewal area was recently rezoned. No additional zoning changes are required to accommodate this project.
- (b) *Maximum Densities.*
The property within the TIF District will be developed in accordance with the applicable zoning district requirements.
- (c) *Building Requirements.*

All properties within this district are subject to the provisions of the City of Fargo Building Codes and the Land Development Code.

- (d) *Plan relationship to land use objectives (land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements.)*

The physical improvements outlined in the plan meet critical needs required for the redevelopment of this property. The project complies with the Downtown Mixed Use zoning district and the redevelopment goals of the Go2030 Comprehensive Plan. The development clears a vacant site and brings needed housing close to downtown Fargo.

Subsection 1.7. Estimate of Development Costs

The City anticipates development of the Renewal Area will involve certain public costs. Under North Dakota Century Code, Sections 40-58-20 and 40-58-20.1 allow the use of funds received from tax increments to be applied to certain specified costs. The City will provide for certain costs as listed below in a Development Agreement, and can use other funds to pay for city infrastructure. The primary costs involved in the development are land costs, demolition and site cleanup, public works improvements and administration.

Land Costs	\$1,075,000
Demolition and Site Cleanup	\$500,000
Public Works Improvements	\$950,000
Administration	\$50,000
TOTAL	\$2,575,000

The City and Developer may also obtain reimbursement of interest between the time project costs are incurred and the date the Tax Increment Revenue Note is issued, such interest being capitalized and added to the foregoing costs.

Subsection 1.8. Estimate of Bonded Indebtedness

The City intends to finance certain costs of the Development through the issuance of a Tax Increment Financing Note to the Developer. In addition, the City may use general obligation bonds, special assessment warrants or refunding improvement bonds pursuant to North Dakota Century Code, Section 40-58-20 (9), and the City may specially assess all or a portion of the costs of development and apply funds received from tax increments to payment of the special assessments and other bonds.

Subsection 1.9. Tax Increment Financing

The County Auditor is requested to compute, certify and remit tax increments resulting from the Development within the Renewal Area.

The original assessed value of the property within the Renewal Area, as last assessed and equalized before the base year of this Plan, is outlined on Attachment A.

Each year, the County Auditor will compute the amount of tax increment generated within the Renewal Area in accordance with the TIF Act. Any year in which there is an "incremental value" as provided in the TIF Act, an increment will be payable to the City and deposited in the fund created by the County Auditor for that purpose. Any year in which there is "lost value" pursuant to the TIF Act, no increment will be payable to the City.

Subsection 1.10. Estimate of Tax Increment

It is anticipated the Development will result in an increase in true and full value of the Renewal Area redevelopment site to \$12.5 million. The value of the Development site within the TIF District is \$319,000. The increase in value will be approximately \$12.2 million. Under the mill rate in effect as of the date of this Plan, the Renewal Area will generate tax increment each year in the estimated amount of \$170,000.

Subsection 1.11. Duration of the TIF District

The City anticipates that the TIF District will continue until all development costs are reimbursed through the receipts of tax increment, or after a maximum of fifteen years after completion of the project. The first tax increment payment will be received in 2024.

APPENDIX A
LEGAL DESCRIPTION OF PROPERTY

General Information

Segment Id: 1
Owner 1: REINHART, GARY J
Owner 2:
Property Address: 1418 1 AVE N
Mailing Address: 1420 1 AVE N FARGO, ND 58102-1609
Addition Name: Reeves
Block: 22
Lot: 1 THRU 6 & 24 THRU 34 INCL, EXC THAT PT OF SD LT 24 LYING ELY OF A LN DRAWN CONCENTRIC WITH & DIST 9 FT WLY, AS MEAS RADIALY FROM BNSF RAILWAY CO (FORMERLY NP RAILWAY CO) SPUR TRACK CENTERLINE, AS NOW LOC & CONST UPON, OVER & ACROSS SD BLK 22 & ALL VAC ALLEY LYING ADJ TO LTS 1-6 & 1/2 OF VAC ALLEY LYING ADJ TO LTS 24-28

Additional Description:

ANT PARCEL #1044 *11/18/99 SPL/FR 2340-33370 & 2340-33610 *03/14/01 LEGAL DESC CORR

Estimated Flood Stage Levels For River Flooding:

If your property is outside the city limits or your property and structure are not affected by a 25 to 44 foot flood stage data will be not available (N/A).

Property may be affected by an approximate flood stage of 40 or higher.

Structure may be affected by an approximate flood stage of 40 or higher.

Please note that this approximation does not take into account any local issues such as ice and debris jams or localized flooding from intense rainfall events.

District Information

Cass School District: 1
Elem. School District: Roosevelt

Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$285,000.00	\$0.00	\$285,000.00

Building Information

Year Built:	1939	No. of Apartment Units:	
Total Building SqFt:	19200	Residential Story Height:	()

Lot Size

Front Width:	265.00	Land Use:	C (Commercial)
Back Width:	132.50	Property Type:	89 (Warehouse & Office)
Depth Side 1:	278.30		

DISCLAIMER: The City of Fargo provides property information to the public "as is" without warranty of any kind, expressed or implied. Assessed values are subject to change by the City of Fargo. In no event will the City of Fargo be liable to anyone for damages arising from the use of the property data. You assume responsibility for the selection of data to achieve your intended results, and for the installation and use of the results obtained from the property data.

Assessment records are for the sole purpose of identifying the land being taxed. In some cases to attain efficiency, Assessment Department legal descriptions may be shortened yet will retain sufficient information to identify the land. Since tax statements and records are not deeds and may contain abbreviated descriptions, they should not be used as a basis for a survey or a legal document and should not be used by surveyors or others as the primary source of a property description.

General Information

Segment Id: 1
Owner 1: REINHART, GARY J
Owner 2:
Property Address: 19 14 1/2 ST N
Mailing Address: 1420 1 AVE N FARGO, ND 58102
Addition Name: Reeves
Block: 22
Lot: 22 & 23

Additional Description:

*10/21/93 SPL/FR 9200-20500

Estimated Flood Stage Levels For River Flooding:

If your property is outside the city limits or your property and structure are not affected by a 25 to 44 foot flood stage data will be not available (N/A).

Property may be affected by an approximate flood stage of 41 or higher.

Structure may be affected by an approximate flood stage of N/A or higher.

Please note that this approximation does not take into account any local issues such as ice and debris jams or localized flooding from intense rainfall events.

District Information

Cass School District: 1
Elem. School District: Roosevelt

Property Valuation

	Land	Improvements	Total
Current Appraised Value:	\$34,000.00	\$0.00	\$34,000.00

Building Information

Year Built:	0	No. of Apartment Units:	
Total Building SqFt:	N/A	Residential Story Height:	()

Lot Size

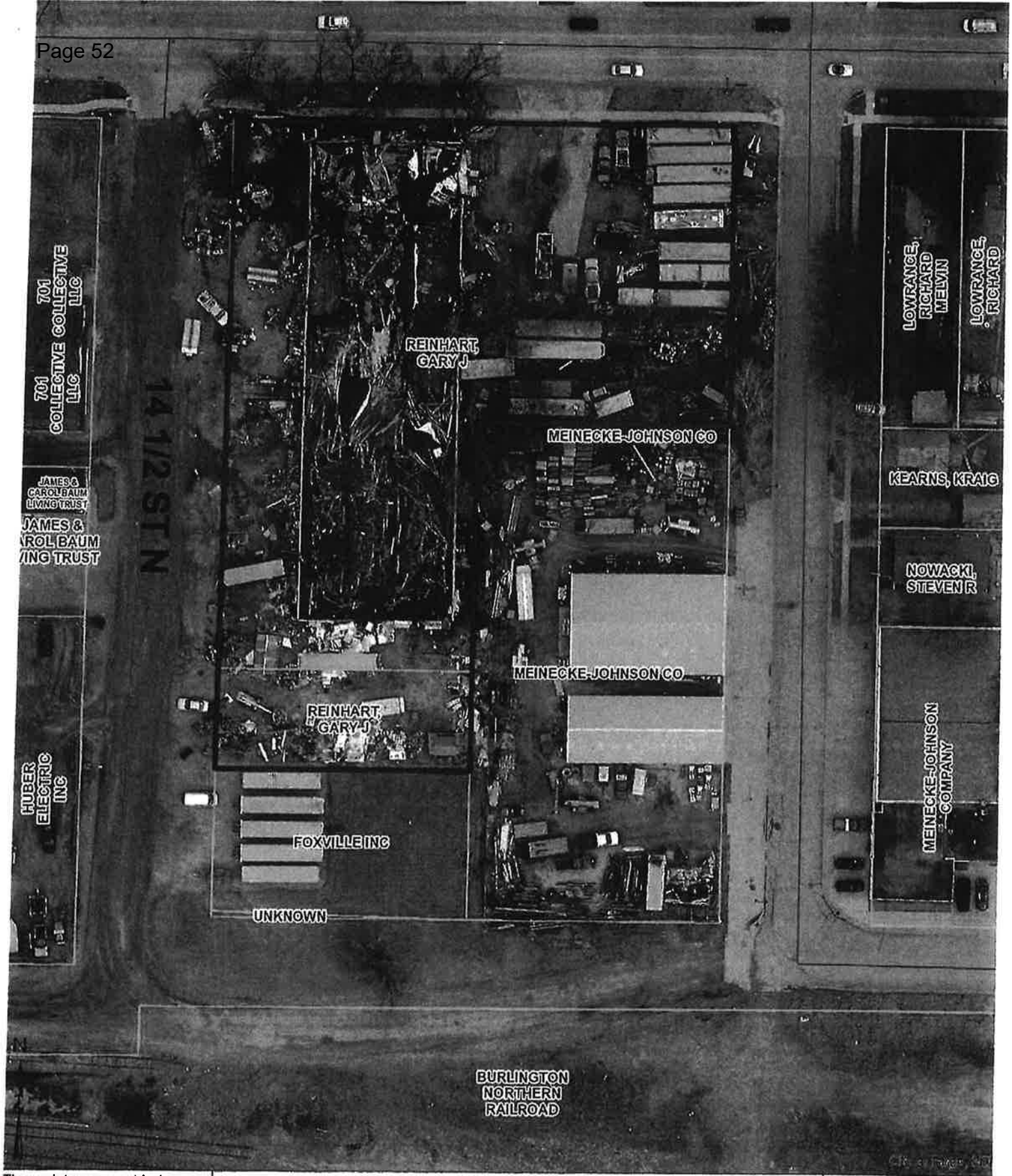
Front Width:	50.60	Land Use:	C (Commercial)
Back Width:	50.60	Property Type:	92 (Vacant Land)
Depth Side 1:	132.50		
Depth Side 2:	132.50	Square Footage:	6705.00

DISCLAIMER: The City of Fargo provides property information to the public "as is" without warranty of any kind, expressed or implied. Assessed values are subject to change by the City of Fargo. In no event will the City of Fargo be liable to anyone for damages arising from the use of the property data. You assume responsibility for the selection of data to achieve your intended results, and for the installation and use of the results obtained from the property data.

Assessment records are for the sole purpose of identifying the land being taxed. In some cases to attain efficiency, Assessment Department legal descriptions may be shortened yet will retain sufficient information to identify the land. Since tax statements and records are not deeds and may contain abbreviated descriptions, they should not be used as a basis for a survey or a legal document and should not be used by surveyors or others as the primary source of a property description.

APPENDIX B

MAP OF THE RENEWAL AREA/TIF DISTRICT



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

J- Street

1:1,128

10/25/2021 11:36 AM

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.

THE CITY OF
Fargo
FAR MORE

APPENDIX C

ZONING MAP

Zone Change (LI to DMU with a C-O)

4 & 5 14th Street N; 9 & 19 14 1/2 Street N;
1418 1st Avenue N

Reeves Addition



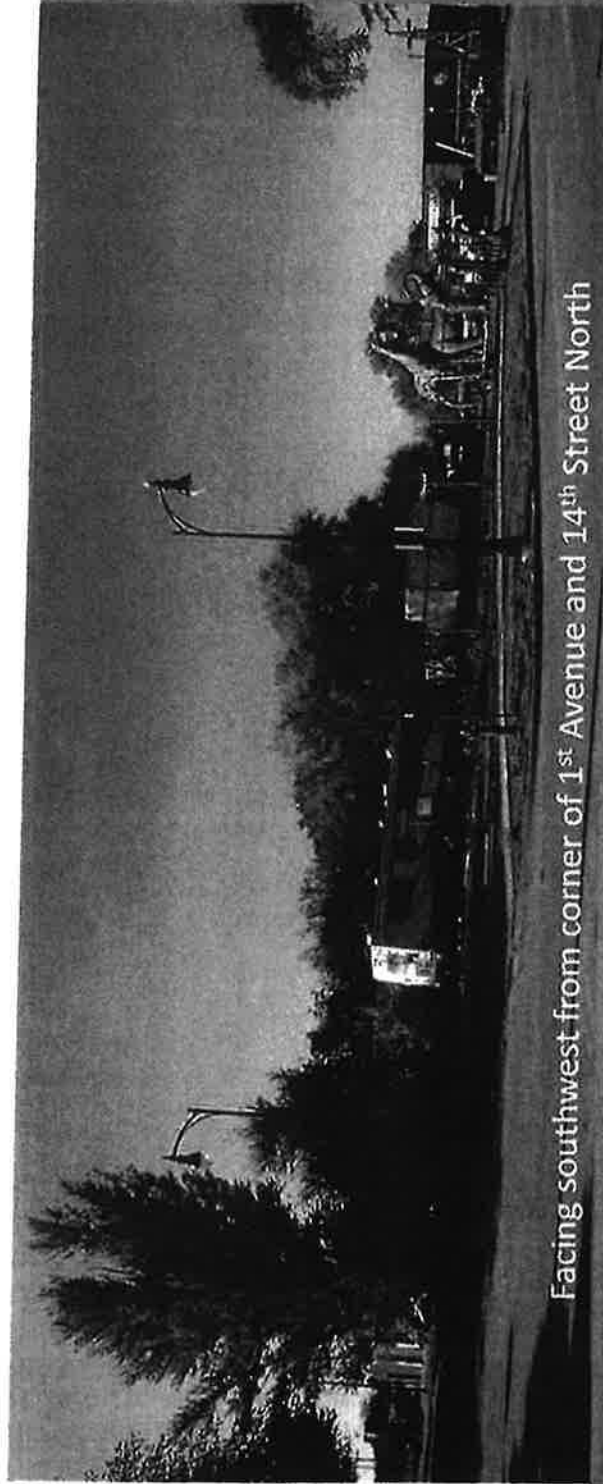
Legend



200

Feet

APPENDIX D
PHOTOS OF EXISTING CONDITIONS



Facing southwest from corner of 1st Avenue and 14th Street North

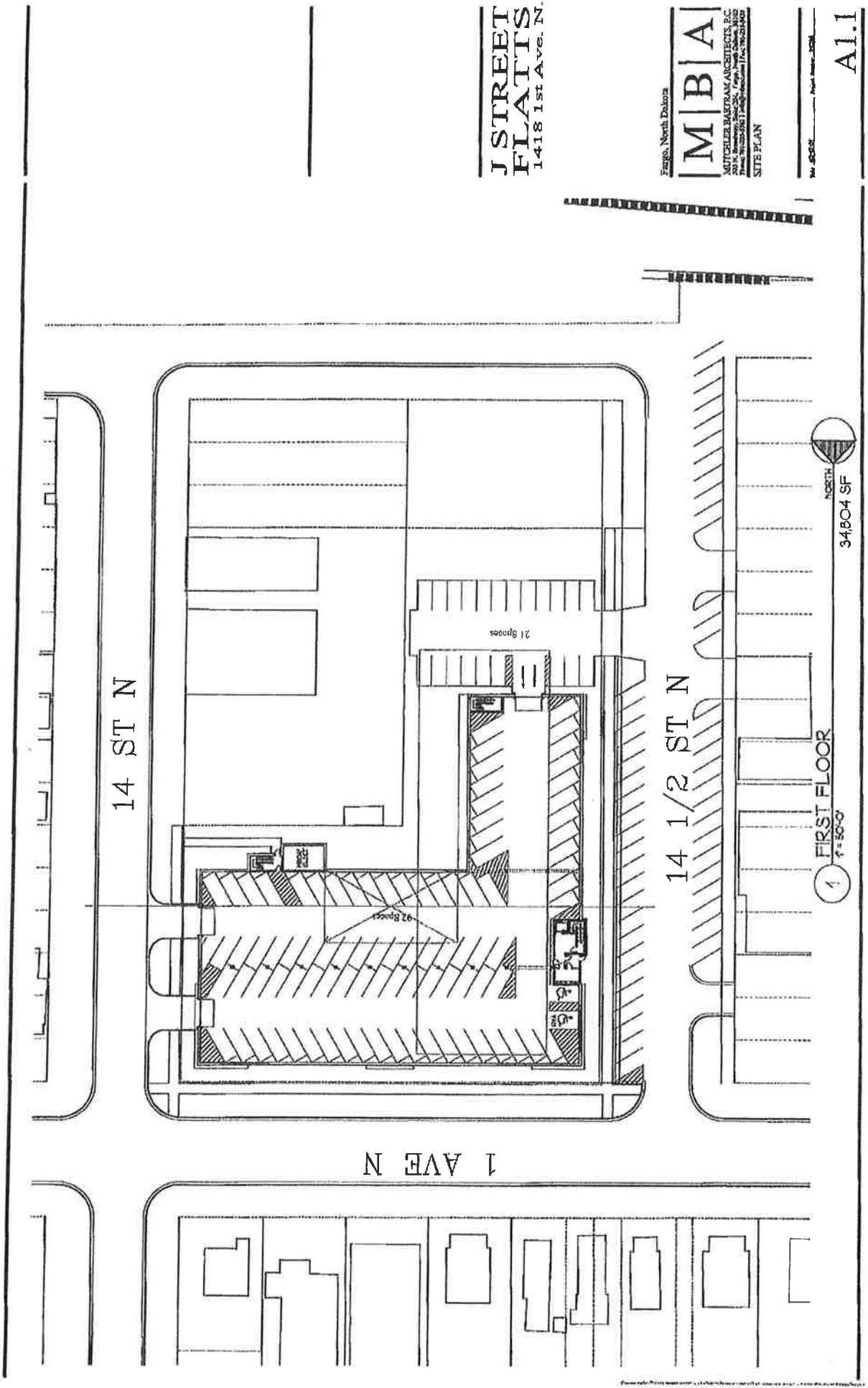


Facing East along 1st Avenue North



Facing south along 14 1/2 Street North from 1st Avenue North

APPENDIX E
PLAN FOR REDEVELOPMENT



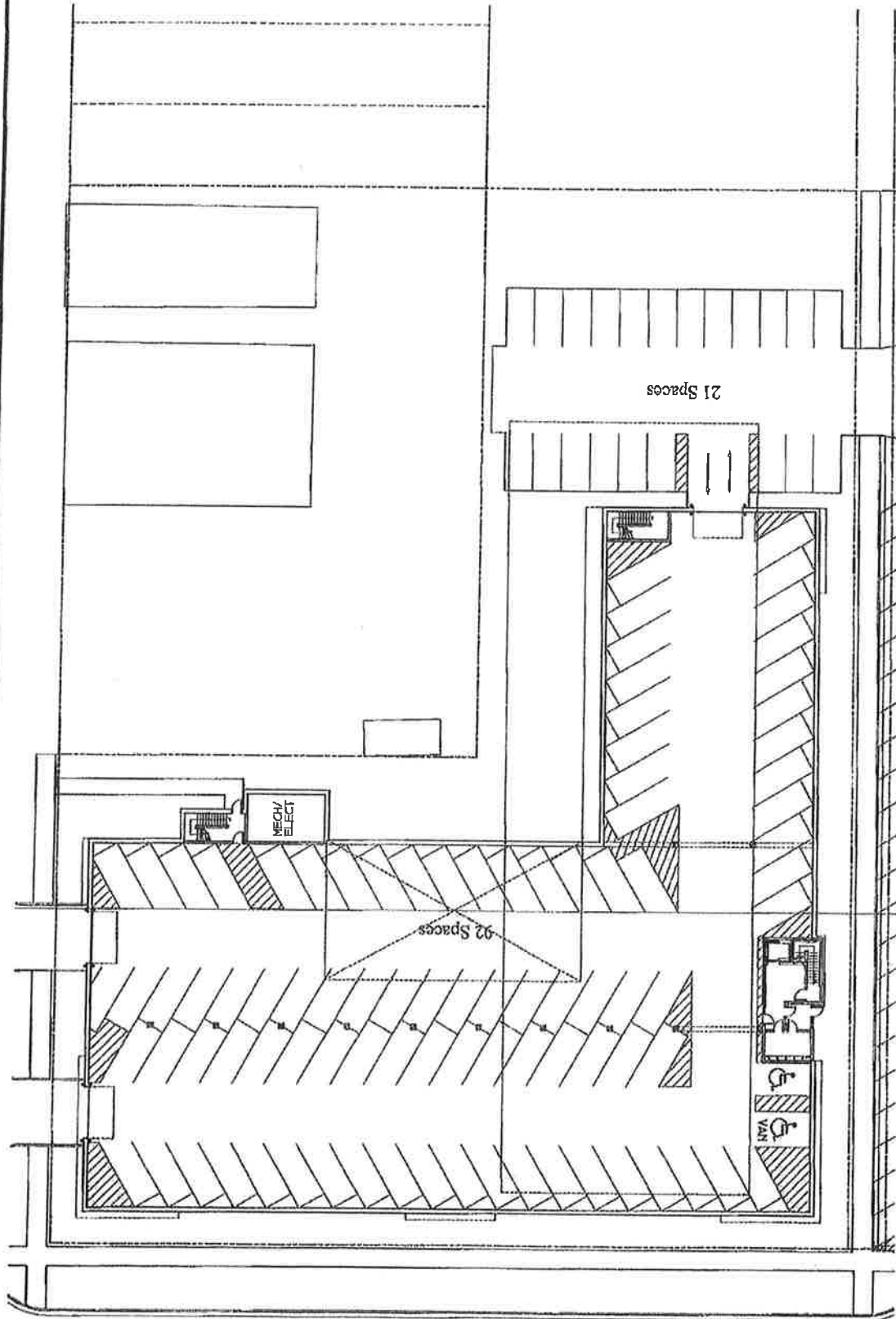
J STREET
FLATTS
1418 1st Ave. N.

Fargo, North Dakota

M|B|A
MITCHELL BARTHAM ARCHITECTS, P.C.
200 N. Broadway, Suite 200, Fargo, ND 58102
Phone: 701.225.5561 Fax: 701.225.5562
SITES PLAN

Net: 505-501-1111 Project Number: 505-501-1111

A1.1



J STREET
FLATTS
1418 1st Ave. N.

Fargo, North Dakota

M | B | A

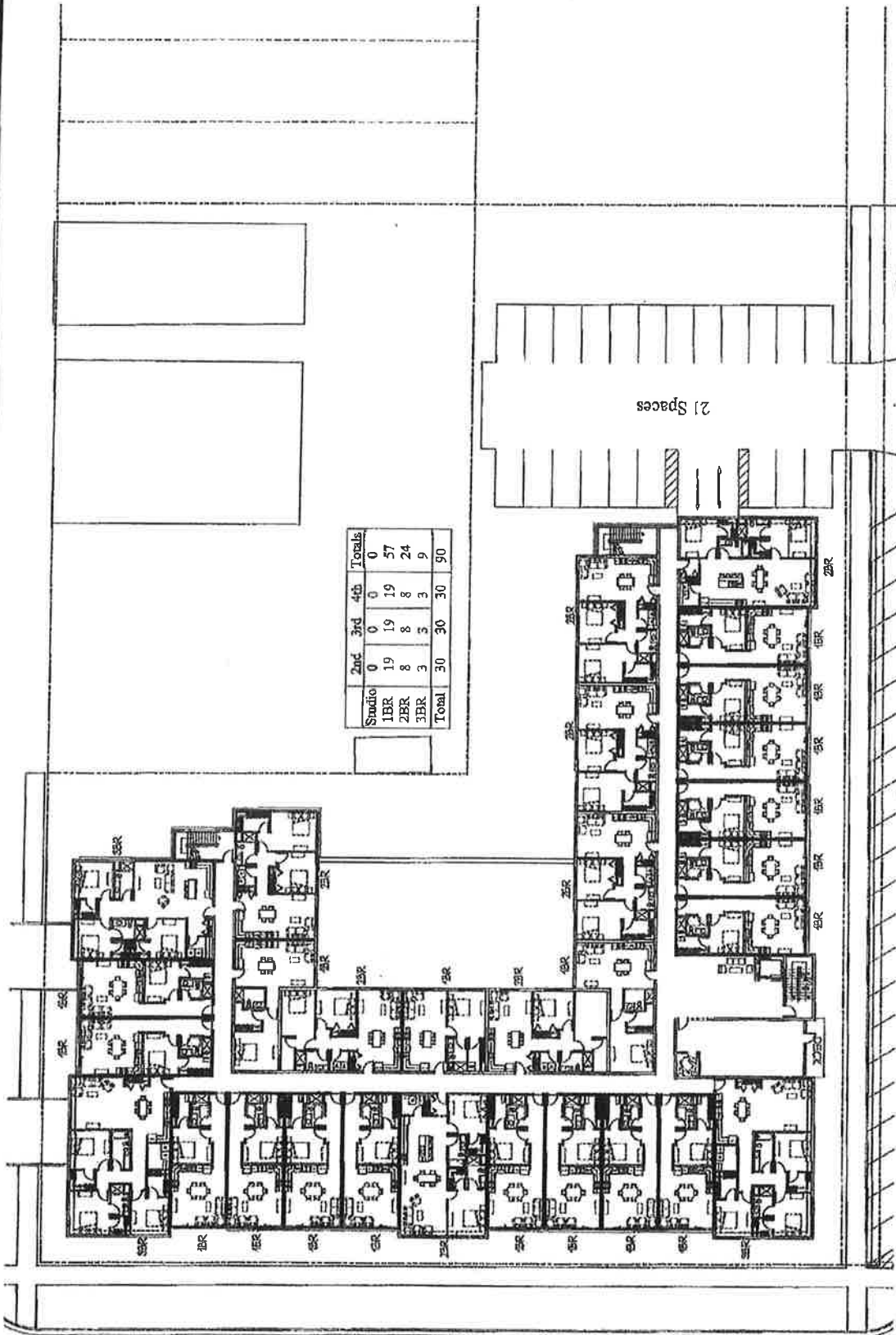
MUTZLER EASTMAN ARCHITECTS P.C.
200 N. Broadway, Suite 200, Fargo, North Dakota, 58102
Phone: 701.233.5555 | Fax: 701.233.5555

FIRST FLOOR PLAN

34,804 SF
NORTH

1 FIRST FLOOR
1" = 30'-0"

A3.1



	2nd	3rd	4th	Totals
Studio	0	0	0	0
1BR	19	19	19	57
2BR	8	8	8	24
3BR	3	3	3	9
Total	30	30	30	90

J STREET
FLATTS
1418 1ST AVE. N.

FARGO, NORTH DAKOTA

M|B|A

MATCHLESS EASTMAN ARCHITECTS, P.C.
300 N. Broadway, Suite 200, Fargo, North Dakota 58102
Phone: 701.785.1234 | Fax: 701.785.1235
www.matchless-eastman.com

SECOND FLOOR PLAN

DATE: 05/05/14 DRAWN BY: JPM/2014/05/05



32,304 SF

1 SECOND FLOOR PLAN
1" = 50'-0"

A3.2

J STREET
FLATTS
1418 1ST AVE. N.

FARGO, NORTH DAKOTA

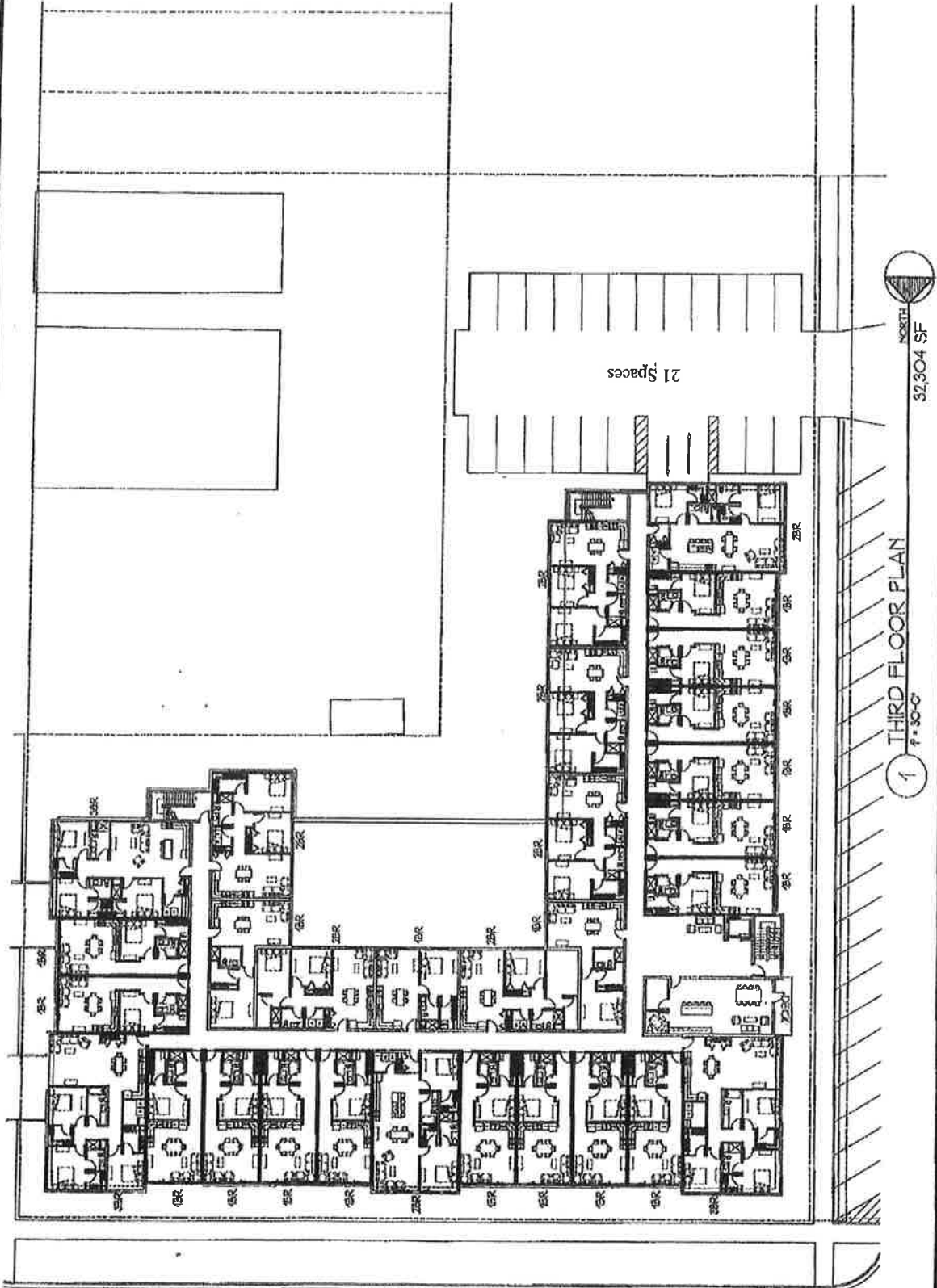
M|B|A

MUTCHES BASTIAN ARCHITECTS, P.C.
207 N. Broadway, Suite 200, Fargo, North Dakota 58102
Phone: 701.233.5400 | Fax: 701.233.5401

THIRD FLOOR PLAN

FILE: JCB-01 PROJECT: JCB-01

A3.3



32,304 SF

1 THIRD FLOOR PLAN
7'-0" x 30'-0"

J STREET
FLATTS
1418 1ST AVE. N.

FARGO, NORTH DAKOTA

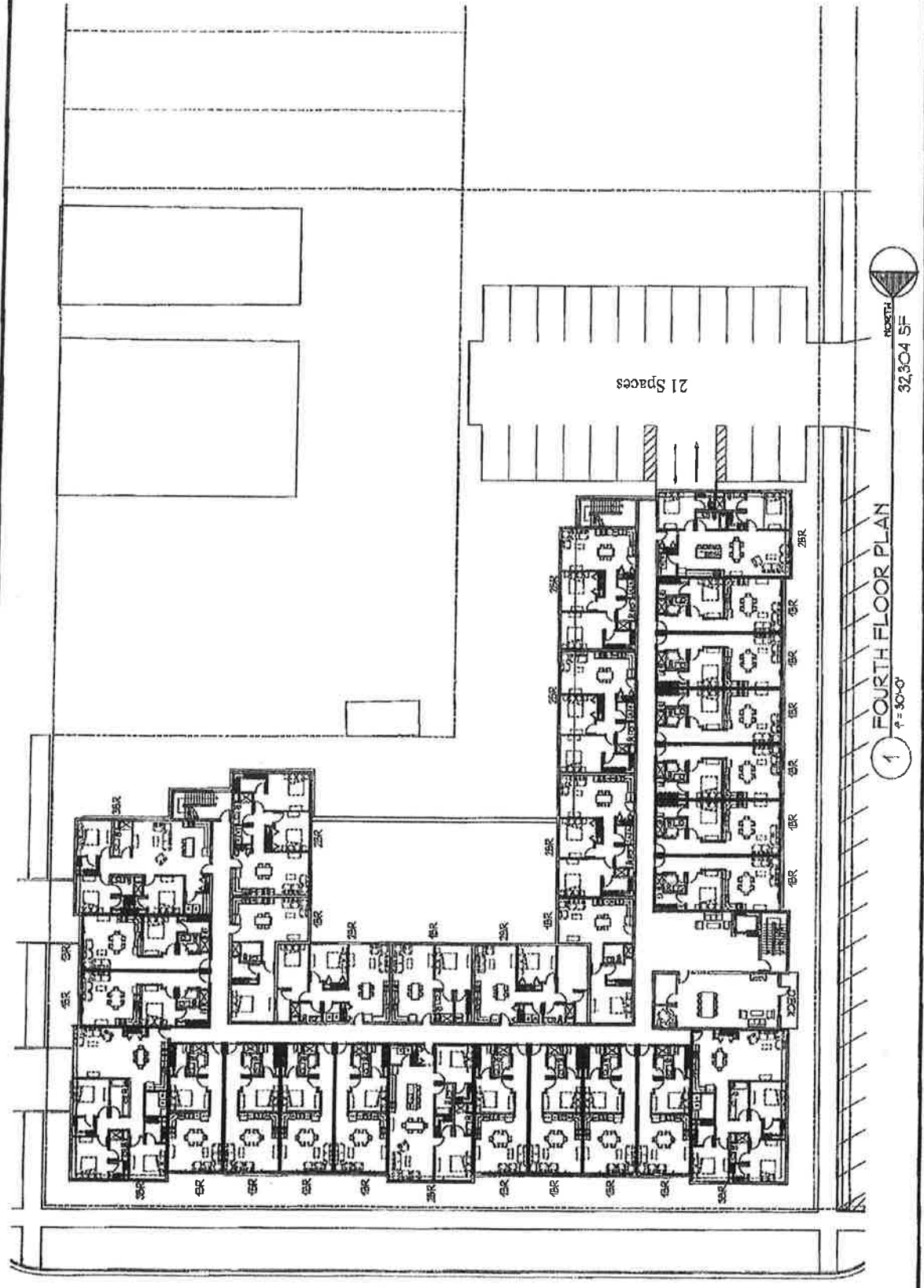
M|B|A

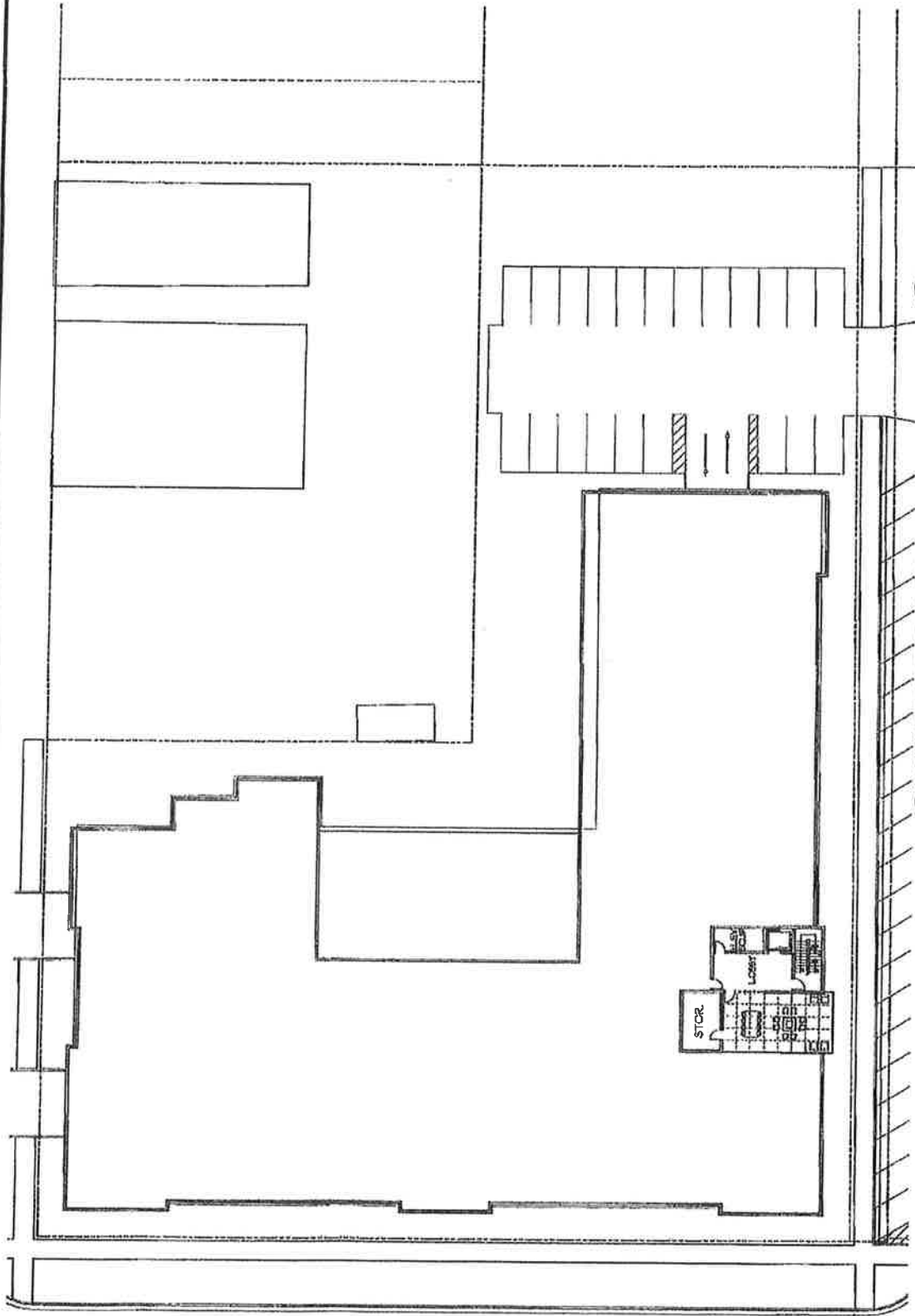
MITCHELL BARTRAM ARCHITECTS, P.C.
500 N. Broadway, Suite 201, Fargo, North Dakota 58102
Phone: (701) 785-1234 Fax: (701) 785-1235

FOURTH FLOOR PLAN

Rev. 05-03-11 Paper Size: 36"x48"

A3.4





J STREET
FLATTS
1418 1ST AVE. N.

FARGO, NORTH DAKOTA

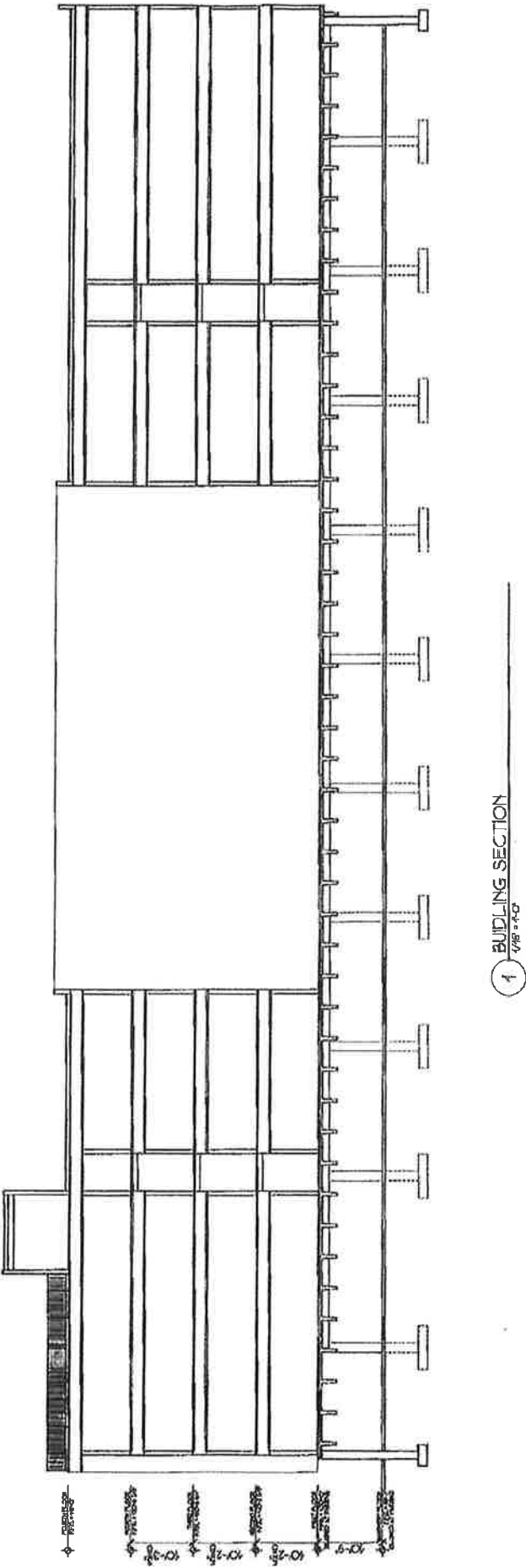
MBA

MUTCHER EASTMAN ARCHITECTS, P.C.
340 N. Broadway, Suite 201, Fargo, North Dakota, 58102
Phone 701.233.2541 Fax 701.233.2542

FIFTH FLOOR PLAN

Rev. 05-2011 Project Number: 2009

A3.4



City of Fargo, North Dakota

Tax Increment Financing Program

“But-For” Report

J St Lofts



February 14, 2022



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3. Assistance Request	3
4. Project Financing	5
5. Return Analysis	6
6. Conclusion	8

Purpose

The purpose of this report is to establish and determine the allowable value of the tax increment financing (TIF) for 1418 1st Ave. N., a development by J-Street Properties, LLC (the "Developer").

PFM first reviewed the application to ensure that appropriate assumptions regarding property value, rent, condo sales, vacancy, expenses, and debt were used by the Developer. Based on those assumptions, PFM projected a 10-year cash flow, calculating an internal rate of return ("IRR"). We also made sure the Developer followed the City of Fargo's (the "City") Tax Increment Financing Policy (the "Policy") including the allowable costs and the Developer's calculations for determining the amount of allowable subsidy financing. The following report details PFM's analysis and conclusions concerning the viability of the proposed project without the subsidy.



Project

The project being proposed by the Developer includes the development of a 90-unit rental apartment building located at 1418 1st Ave. N.

The Developer estimates the construction will be completed in the Summer of 2023 with occupancy immediately following. The Developer has requested TIF assistance in the amount of \$1,250,000 to complete the project.



Assistance Request

The Developer is requesting assistance in the form of tax increment financing under the City's Tax Increment Financing Policy. The Policy provides public assistance to a development through tax increment financing for private development. According to the Policy, the maximum TIF assistance is 15 years, and the Developer is asking for a 10-year exemption.

Eligible TIF Expenditures

Property Acquisition Costs	\$ 790,000
Building Demolition/Disposal	250,000
Tree Trimming/Removal	10,000
Clearing/Grading	40,000
Soil Borings	9,500
Remove Poor Soils & Replace w/ Suitable Soils	100,000
Disconnect Utilities	20,000
Site Survey	4,000
Remove Existing Concrete Sidewalks	10,000
Provide New Curb & Gutter	25,000
New Sidewalk	30,000
Landscaping in ROW	20,000
New Sewer, Water, Storm Stubs in ROW	25,000
Street Patching	10,000
Storm Detention Pond	50,000
Signage/Barricades	5,000
City Administrative Fee	69,925
Total Eligible TIF Expenditures	\$1,468,425

The Policy limits the TIF assistance to 15% of hard construction costs, including the costs of acquisition. Based on total hard construction costs of \$11,850,000 the Developer can receive up to \$1,777,500. The Developer is requesting \$1,468,425 which is below the maximum allowed.

Land Cost

The Developer states the purchase price to acquire the property for the project is \$1,075,000. Land acquisition is reimbursable under the Policy. The Developer is requesting to be reimbursed \$790,000 for the land acquisition which complies with the Policy.



The Policy states that the maximum eligible land costs to be recouped by the Developer should be limited to the lesser of:

- 1.) **The total acquisition cost for the property, provided that the acquisition cost is no more than 150% of the assessor's market value of the property.** The Developer's cost to acquire the property is \$1,075,000. The assessor's market value for the property totals \$319,000. The eligible amount for reimbursement is 150% of \$319,000 which totals \$478,500. The Developer's reimbursement request of \$790,000 is not within the allowable reimbursable amount under this policy.
- 2.) **The difference between what was paid by the Developer for the property less the assessor's market value for the land (as opposed to land and buildings).** The current assessor's land value is \$319,000. Based on an acquisition price of \$1,075,000 the maximum reimbursement is \$756,000.

The lesser of the two tests detailed above is \$478,500. The requested reimbursement amount for land acquisition of \$790,000 is not allowable under the Policy.

Term

The Policy states the length of the term will be limited to 15 years or less. The Developer is requesting a 10-year term.

TIF Estimate

PFM estimates that \$1,456,858 of TIF will be generated over the 10 years assuming a 1.50% market growth rate. Based on a discount rate of 3.25%, the present value of the estimated TIF cash flow is \$1,250,000 through 10 years. However, the present value of the TIF cash flows is estimated to reach the requested amount in year 9 so the TIF would end early.



Project Financing

The Developer is investing 20% equity, or \$2,950,000, and will be privately financing \$11,800,000. The Developer is additionally requesting annual TIF assistance in the total amount of \$1,250,000. The private financing is estimated to be a 25-year loan with an estimated interest rate of 3.25% resulting in an annual principal and interest payment of \$696,664. The application states the project will be completed by the Summer of 2023.



Return Analysis

In calculating the internal rate of return, PFM first analyzed the Developer's assumptions including expected monthly rent, vacancy rate, and operating expenses. The Developer is proposing rents of \$925 for a one-bedroom unit type A, \$975 for a one-bedroom unit type B, \$1,200 for a two-bedroom unit and \$1,400 for a three-bedroom unit. The Developer has proposed a reasonable amount for rent for the current market and location. Annual estimates of operating expenses for the 90-unit rental development were provided, as follows; Maintenance Costs - \$48,160, Utilities - \$117,450, Miscellaneous fees - \$2,700, Real Estate Taxes - \$173,933 (without TIF), Insurance Costs - \$22,125, and Administration Costs - \$94,325. The total expenses are approximately 42% of gross operating income.

The second step in determining the internal rate of return is to determine the earned incremental value of the property over a 10-year period. That value, along with the net operating income cash flows, was used to calculate the internal rate of return. PFM determined that without TIF assistance the Developer would have about a 5.58% internal rate of return based on a 10-year internal rate of return. The Developer would have about a 9.04% internal rate for 10 years if it received the public assistance. A reasonable rate of return for the proposed project is 10% - 15%.

Another measure of feasibility and project viability is the debt coverage ratio. PFM has projected a maximum debt coverage ratio in Year 10 of 1.04x without assistance, with a Year 6 coverage of 0.98x. If the City provided assistance to the project the maximum debt coverage is projected to be 1.28x in Year 8, with a Year 6 coverage of 1.24x.

Using PFM's "without assistance" cash flow as the base scenario, PFM ran sensitivity analyses in order to determine if the project would be likely to occur without public assistance. For the first sensitivity analysis, PFM analyzed how much project funds would have to decrease in order to produce a reasonable internal rate of return. We also looked at how much the rental rates would have to fluctuate in order to achieve a reasonable internal rate of return. Lastly, we looked at a combination of the two scenarios. For the sensitivity analyses, we assumed a reasonable internal rate of return of 10.00%.

Sensitivity Scenario 1 – Project Costs

The project would have to be reduced by \$1,474,000 or 10.0% in order for the project to become viable without assistance. This reduces the amount to be financed from \$11,800,000 to \$10,620,800 and reduces the annual payment from \$696,644 to \$627,045 for the loan. It is unlikely that a reduction in project costs of this magnitude would occur at this stage in the development, but could still occur.

Sensitivity Scenario 2 – Rental Rates

In order for the project to be viable without public assistance, the rental rates would have to increase by 15.1%. PFM believes this is a high increase to the Developer's proposed rents. This increases annual rental revenue from \$871,965 to \$1,003,142. PFM believes the proposed rents are reasonable rental rates and does not believe an increase this large would occur.

Sensitivity Scenario 3 – Combination of Project Costs and Rental Rates

The final scenario looks at both a reduction of project costs and an increase in rental rates. The analysis showed that project costs would have to be reduced by \$890,000 or 6.0% and rental rates would have to increase by about 6.0%. Either of these events could occur but may be unlikely to occur together.

The above scenarios show the circumstances in which the project would become viable without public assistance. PFM has determined that the project is unlikely to occur "but-for" the public assistance.



Conclusion

The Developer will bear all the risk involved with the project. The Developer is dependent on a number of factors before and after the project is completed, including project costs, occupancy of the buildings, the rental market, and monthly expenses. The base scenario without assistance along with the sensitivity analyses demonstrates that the project would be unlikely to be feasible without assistance.

PFM has calculated that with public assistance, and based on the assumptions outlined in this report, a 10-year internal rate of return is estimated to be 9.04%. In addition, the coverage ratio in Year 8 is estimated to be 1.28x. The estimated internal rate of return is appropriate given the risk level for this type of project. Based on the information provided to PFM, the calculated internal rate of return and the coverage requirements, PFM concludes the project would not be feasible without public assistance.



FIRST AMENDMENT TO
DEVELOPER AGREEMENT
BETWEEN
CITY OF FARGO
AND
J STREET PROPERTIES, LLC

THIS FIRST AMENDMENT TO DEVELOPER AGREEMENT ("Amendment") is dated as of _____, 2022; by and between the City of Fargo, a North Dakota municipal corporation, and J-Street Properties, LLC, a North Dakota limited liability company ("Developer").

WHEREAS, the City and Developer have entered into a Developer Agreement (referred to as the "Agreement") with an Effective Date of _____, 2022, pertaining to the development of certain property located generally at 1418 1st Ave., N., Fargo, ND 58102 the legal description for which is set forth in the Agreement; and,

WHEREAS, the Agreement sets forth certain improvements to be constructed and installed by the Developer; and,

WHEREAS, the Agreement contains certain provisions by which the City is expected to issue to the Developer a certain Tax Increment Note by which the Developer is, by the terms thereof, to receive periodic payments from the City consisting of, among other things such as accrued interest, the Available Tax Increments received by the City during a stated period of time, said "Available Tax Increments" being defined as provided in the Agreement; and,

WHEREAS, it is the desire of the parties that certain public improvements to a portion of NP Avenue lying generally south of the Development Project be undertaken by the City and for the Developer to reimburse the City for all of the City's costs and expenses in making said certain public improvements; and, therefore, the parties wish to amend the Agreement, accordingly;

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into this Amendment to Developer Agreement, and the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the City and Developer covenant and agree as follows:

I. **The Agreement is hereby amended as follows:**

a. **The defined term “Available Tax Increments” shall be as follows:**

“Available Tax Increments” means the Developer Tax Increments (a) minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby; and, (b) minus the City’s Annual NP Avenue Project Payments for Tax Years three, four, five and six.

b. To the extent that certain public improvements to a portion of NP Avenue lying generally south of the Development Project being contemplated by the parties is undertaken, constructed and installed by the City, then the total costs borne by the City (roughly estimated currently at \$275,000), to be referred to in this Agreement to be the “Total NP Avenue Improvements Project Cost”, shall be repaid to, and recouped by, the City along with interest thereon at a rate of Three and One-half Percent (3-1/2%) per annum, simple interest, from the Tax Increment in four payments as follows: Commencing with the third Tax Year, the City shall be entitled to retain twenty-five percent (25%) of the principle of the Total NP Avenue Improvements Project Cost plus interest thereon at said 3-1/2% rate, with the City retaining an additional 25% from the Tax Increment generated in each of the following three Tax Years thereafter, plus accrued interest, with any remaining amount of principal and interest becoming due and payable from the Tax Increment for the sixth Tax Year and, therefore, as a result, the Available Tax Increments shall not be reduced by any principle or interest of the NP Avenue Improvements Project Cost in the first or second Tax Year, and that once the City has been paid in full as to the NP Avenue Improvements Project Costs, all otherwise Available Tax Increments shall be provided in full to the Developer. The said annual principal payment with said accrued interest for Tax Years three, four, five and six, shall be referred to as the “City’s Annual NP Avenue Project Payments”. It is further agreed and understood that City’s right to recoupment and repayment of the NP Avenue Improvements Project Cost is solely limited to the right to retain Tax Increments as described in this Agreement and that said recoupment rights are not an debt or obligation of the Developer itself.

c. The Tax Increment Note to be issued in accordance with the Agreement shall be issued subject to this Amendment regardless of whether the terms hereof, including the revised definition hereof, is contained within the terms of said Note.

II. **In all other respects the Development Agreement shall remain in full force and effect.**

III. **Effective Date. This Amendment to Development Agreement shall be effective as of _____, 2022.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGES FOLLOW]

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By _____
Dr. Tim Mahoney, its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

Execution Page to Developer Agreement between the above-named Party and J-Street Properties, LLC

J-Street Properties, LLC

By _____,
Kevin J. Bartram, President

DEVELOPER AGREEMENT

By and Between

CITY OF FARGO, NORTH DAKOTA

a North Dakota Municipal Corporation

and

J-Street Properties, LLC

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DEVELOPER AGREEMENT

THIS AGREEMENT is dated as of _____, 2022; is by and between the City of Fargo, a North Dakota municipal corporation, and J-Street Properties, LLC, a North Dakota limited liability company; and provides as follows:

ARTICLE I

Definitions

Section 1.1. **Definitions.** As used in this Agreement, the following terms have the following respective meanings:

"Agreement" means this Developer Agreement, as the same may be amended.

"Available Tax Increments" means the Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby.

"Certificate of Completion" means a certification in the form of the certificate attached hereto as Exhibit F and hereby made a part of this Agreement, provided to the Developer pursuant to Section 4.4 of this Agreement.

"City" means the City of Fargo, North Dakota.

"Closing Date" means the date Developer closes with its institutional lender on its financing of the Minimum Improvements.

"Condemnation Award" means the amount remaining from an award to the Developer for the acquisition of title to and possession of the Development Property, or any material part thereof, after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such award.

"County" means the County of Cass, North Dakota.

"Capitalized Interest" means the portion of the principal amount of the Tax Increment Note that represents the sum of the products of the various eligible expenses initially borne by Developer and the City that will be reimbursed by the Tax Increment Note multiplied by an interest rate of Three and One-half Percent (3.5%) per annum, simple interest, multiplied by the number of years, or fraction thereof, between the date such expense was incurred to the date of the Tax Increment Note.

"Developer" means J-Street Properties, LLC, a North Dakota limited liability company, or permitted successors or assigns.

"Developer Tax Increments" means the portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes.

"Developer's Taxes" means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifteenth (15th) Tax Year and earlier Tax Years. Taxes for the sixteenth (16th) year following the first Tax Year, or for any subsequent year, are not included as Developer's Taxes.

"Development Costs" means those costs incurred and to be incurred by or on behalf of the Developer in acquiring the Development Property, in completing the Improvements and in financing those undertakings (including all interest charges on borrowed funds).

"Development Plan" means the Developer's development plan for the Development Property approved by the City on March 21, 2022, including all exhibits thereto, as the same may be amended from time to time.

"Development Property" means the real property described in Exhibit A to this Agreement.

"Effective Date" means the date this Agreement is actually executed and delivered.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. sec. 96.01 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. sec. 69.01 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. sec. 1802 et seq., the Toxic Substances Control Act, 15 U.S.C. sec. 2601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. sec. 1251 et seq., the Clean Water Act, 33 U.S.C. sec. 1321 et seq., the Clean Air Act, 42 U.S.C. sec. 7401 et seq., , and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, all as may be from time to time amended.

"Event of Default" means an event of default defined in Section 9.1 of this Agreement.

"Hazardous Substances" means asbestos, ureaformaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law.

"Improvements" means the improvements constructed or to be constructed by the Developer on the Development Property, including all related landscaping, lighting, parking, and other site improvements. The Improvements may exceed, but shall not be less than, the Minimum Improvements, as provided in Section 4.1

"Maturity Date" means the date that is three (3) years from the Payment Date for the fifteenth Tax Year following the date of the issuance of the Tax Increment Note.

"Minimum Improvements" means the improvements contemplated by and in accordance with this Agreement and generally described in Section 4.1.

"Mortgage" means any mortgage or security agreement in which the Developer has granted a Mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon, and which is a permitted encumbrance pursuant to the provisions of Article VII; the term "Mortgage" shall specifically include, but shall not be limited to, leases or sale-leaseback arrangements which provide financing for the acquisition of the Development Property, or the construction of the Minimum Improvements.

"Net Proceeds" means any proceeds paid by an insurer to the Developer or City under a policy or policies of insurance required to be provided and maintained by the Developer pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

"Party" means either the Developer or City.

"Parties" means the Developer and City.

"Project" means the project of improvements in and adjacent to the TIF District contemplated in the Development Plan.

"Specified Event of Default" means an Event of Default for which the City may withhold payment on the Tax Increment Note. Such Event of Default consists of a default of the Developer after the issuance of the Tax Increment Note in the Developer's ongoing covenants set forth in Sections 3.6, 8.1, and 8.2.

"Tax Increment Note" means the City's Tax Increment Revenue Note in the initial principal amount of \$1,300,000.00 or in a lesser initial principal amount that represents reimbursement of eligible costs paid by the Developer as described in this agreement, plus Capitalized Interest at 3.5% per annum, the form of which is attached as Exhibit C to this Agreement, issued when conditions set forth in Section 3.3 are met.

"Tax Increments" means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

"Tax Year" is one of a maximum of fifteen (15) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the fourteen (14) subsequent calendar years. The fifteenth (15th) Tax Year, therefore, is the fourteenth (14th) calendar year following the first said year.

"Urban Renewal Law" means the North Dakota Urban Renewal Law, that is, North Dakota Century Code, Chapter 40-58, as the same may be amended.

"TIF District" means the area identified as the "District", under the City's Development Plan approved by the Board of City Commissioners of the City of Fargo on March 21, 2022, as the same may be amended.

"Unavoidable Delays" means any delay outside the control of the Party claiming its occurrence which is the direct result of strikes; other labor troubles; unusually severe or prolonged bad weather; unavailability of materials; Acts of God; fire or other casualty to the Improvements; remediation of contaminants, pollutants or hazardous substances; unforeseen soil conditions, hazardous materials or concealed conditions; litigation (including without limitation bankruptcy proceedings) and which directly results in delays; or acts of any federal, state or local governmental unit which directly result in delays.

ARTICLE II

Representations, Warranties and Covenants

Section 2.1. **Representations, Warranties and Covenants by City.** The City represents and warrants that:

(a) The City has received the approval of its Board of City Commissioners to enter into and perform its obligations under this Agreement.

(b) The City herein makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon or that the Development Property shall be suitable for the Developer's purposes or needs.

Section 2.2. **Representations, Warranties and Covenants by Developer.** The Developer represents and warrants that:

(a) The Developer is a limited liability company duly organized and in good standing under the laws of the State of North Dakota, is not in violation of any provisions of its operating agreement or articles of organization or the laws of the State of North Dakota and is authorized to enter into and perform its obligations under this Agreement.

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented or limited by and will not conflict with or result in a breach of any provision or requirement applicable to the Developer or of any provision of any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound.

(c) The Developer, with respect to its construction, operation and maintenance of the Improvements upon the Development Property, will cause the same to occur in accordance in all material respects with this Agreement and all local, state and federal laws and regulations (including without limitation environmental, zoning, building code and public health laws and regulations and including any relocation requirements under local, state or federal law).

(d) The Developer has received no notice or communication from any local, state or federal official or body that any activities of the Developer respecting the Development Property contemplated by this Agreement, including the construction of the Improvements on the Development Property, may be or will be in violation of any law or regulation.

(e) The Developer will use its reasonable efforts to obtain, in a timely manner, all required permits, licenses and approvals, and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Improvements may be lawfully constructed and completed.

(f) To the best knowledge and belief of the Developer, the construction of the Improvements on the Development Property within the reasonably foreseeable future is

conditioned on the assistance and benefit to the Developer provided for in this Agreement. The Developer would not undertake the Project without the financing provided by the City pursuant to this Agreement.

(g) The Developer represents and covenants that throughout the term of this Agreement that the tax increment assistance provided under this Agreement will be used by the Developer solely to finance those costs which are eligible costs for reimbursement of a project as defined in the Urban Renewal Law. This provision does not apply to those costs that are initially borne by the City and reimbursed to the City by Developer as provided in Section 3.3 of this Agreement.

(h) The Developer will cooperate fully with the City with respect to any litigation commenced by third parties or by the City or both against third parties with respect to the Project.

(i) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(j) The Developer has not received any notice from any local, state or federal official that the activities of the Developer with respect to the Project may or will be in violation of any Environmental Law or regulation, and the Developer, without any duty of inquiry, is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any Environmental Law.

(k) The Developer understands that the City will or may subsidize or encourage the development of other properties in the City, including properties that compete with the Development Property and Improvements, and that such subsidies or encouragements may be more favorable than the terms of this Agreement, and that the City has not represented that development of the Development Property will be favored over the development of other properties.

(l) The Developer will spend enough in construction of the Minimum Improvements, when combined with the value of the Development Property, to generate an estimated minimum market value of \$14,750,000.00.

(m) The Developer expects that, barring Unavoidable Delays, the Project will be substantially completed by December 31, 2023.

(n) As of the Closing Date, the Developer shall have binding arrangements for all the equity and loan financing necessary to complete the Minimum Improvements.

(o) As of the Closing Date, the Developer shall have submitted to the City Construction Plans for the Improvements as described in Section 4.1

(p) As of the Closing Date, the City shall be satisfied in its reasonable judgment that the Developer has firm arrangements for financing construction or acquisition of the Project in

an amount sufficient, together with equity commitments, to complete the Project in conformance with such Construction Plans, or the City shall receive such other evidence of financial ability as in the reasonable judgment of the City is required.

(q) As of the Closing Date, the Developer shall have obtained an opinion from its independent legal counsel that this agreement is in accordance with North Dakota state law, including the provisions of N.D.C.C. Chapter 40-58, and is a binding and enforceable agreement.

(r) As of the Closing Date, the Developer has marketable record title to Developer's Property free and clear of any encumbrances or lienholders except as provided in Article VII of this Agreement or, to the extent Developer does not have marketable record title, Developer has obtained from the person, firm or entity having such title an agreement [hereinafter referred to as an "Agency Agreement"] authorizing Developer to develop Developer's Property as contemplated by this agreement and authorizing Developer to enter into this Agreement, said Agency Agreement to be in a form approved by the City.

ARTICLE III

Completion of Improvements; Reimbursement of Certain Costs

Section 3.1. **Completion of Improvements by Developer.** Subject to Unavoidable Delays, as provided in Section 4.2, below, the Developer shall have substantially completed the Improvements by December 31, 2023. The Developer's use of the Development Property shall be subject to (a) all of the conditions, covenants, restrictions and limitations imposed by this Agreement and also to (b) building and zoning laws and ordinances and all other local, state and federal laws and regulations.

Section 3.2. Intentionally Left Blank.

Section 3.3. **Reimbursement by City of Certain Costs; Terms of Tax Increment Note.** The Developer hereby represents to the City that the Developer has incurred and paid and will incur and pay significant Development Costs. The reimbursements that establish the principal balance of the Tax Increment Note whose principal and interest are payable to the Developer shall be as follows. The City hereby agrees to defray a portion of the Development Costs up to \$1,300,000.00, comprised of three components:

First Component: part of the acquisition cost of the Development Property (\$790,000) that will be borne by Developer;

Second Component: Demolition and Site Cleaning, Soil Correction and Remediation of grading. This cost is the estimate to remove substandard soils and rubble, plus fill and grade the site (\$460,000) that will be borne by the Developer;

Third Component: Advance Administrative/TIF Fees. Other Tax Increment costs include the administrative costs (\$50,000.00) for the city of Fargo that will be borne by the Developer.

The advance administrative fee, set forth above, will be paid by Developer to the City at the time of issuance of the Tax Increment Note. In addition, any annual administrative fee equal to five percent (5%) of the annual increment received from the County Auditor shall be retained by the City prior to remittance to developer of said increment as payment of the Tax Increment Note.

If there is a category of expense that is deemed ineligible under the Urban Renewal Law, but there are additional eligible expenses not otherwise reimbursed under this Agreement, then such otherwise non-reimbursed, but eligible, expenses may be recognized as an eligible expense under this Agreement. In addition to the foregoing costs, Developer shall be entitled to reimbursement over and above the foregoing eligible expenses an agreed upon interest rate of Three and one-half Percent (3.5%) Per Annum to be paid to Developer under the Tax Increment Note. All of the said costs, and interest, meet the representation set forth at Section 2.2(g) by issuing the Tax Increment Note, substantially in the form of Exhibit C to this Agreement, subject to the following conditions:

(a) There shall be one (1) Tax Increment Note. The amount of the Tax Increment Note shall be determined by adding the \$1,300,000.00 (or so much thereof as shall be demonstrated as set forth in Section 3.3(d)) plus a sum equal to Capitalized Interest. The Tax Increment Note shall provide for payments to be made by the City to Developer of Developer's Tax Increment received by the City from the County for the Project for the first Tax Year and for each of fourteen (14) subsequent Tax Years, with payments to be made annually on the Payment Dates, it being further provided that Available Tax Increment exists pertaining to the fifteenth (15th) or earlier Tax Years.

(b) The Tax Increment Note shall be delivered only if no Event of Default shall have occurred and be at the time continuing.

(c) The Parties recognize that that the City intends to undertake the design, construction and installation of certain public improvements to a portion of NP Avenue lying generally south of the Development Project with the total cost thereof to be borne by the City (roughly estimated currently at \$275,000) subject to recoupment by the City, along with interest thereon, from the Tax Increment in a manner as agreed by the Parties..

(d) If the conditions set forth in this Section are met, the Tax Increment Note shall be dated, issued and delivered when the Certificate of Completion has been delivered and when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the Developer has incurred and paid eligible costs of the Improvements to be borne by Developer which will not be otherwise reimbursed or paid hereunder. Demonstration of eligible costs of Improvements up to the maximum amount of the Tax Increment Note shall be made pursuant to one or more certifications in form and substance satisfactory to the City that all or a portion of the costs of the Improvements have been incurred, together with lien waivers and evidence satisfactory to the City of the nature and amount of the costs of the Improvements and of the costs incurred by the Developer. Each certification shall demonstrate the specific purpose and amount of the costs of the Improvements and their compliance with the representation set forth at Section 2.2(g). The City's determination of a cost's compliance with the representation set forth at Section 2.2(g) shall, if based on the advice the city attorney's office after consultation with the Developer or its counsel, be conclusive. The delivery of the Tax Increment Note itself constitutes reimbursement of expenditures in an amount equal to the principal amount of the Tax Increment Note; there are no monetary proceeds received by Developer upon delivery of the Tax Increment Note.

(e) Subject to the provisions of the Tax Increment Note, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on each May 15th, commencing on the May 15th after completion of the project, issuance of the certificate of completion and Tax Increment Note, and continuing through the Maturity Date (the "Payment Dates"), in the amount described in this subsection. The sole source of funds available for payment of the City's obligations to the Developer under this Section shall be the Tax Increment Note (a non-cash source), and the sole source of funds available for payment of the Tax Increment Note shall be the Available Tax Increments. The amounts otherwise payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City within the preceding six (6) months. All payments made on the Tax Increment Note shall be applied

first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever.

(f) The unpaid principal of the Tax Increment Note shall bear interest at Three and one-half Percent (3.5%) per annum from the date of issuance, compounded annually. Interest shall be computed on the basis of a 360-day year consisting of 12 months of 30 days each.

(g) The City expresses no opinion in particular as to whether, or not, the interest income from any such TIF Revenue Note is exempt from federal income taxation, but it is assumed that the Tax Increment Note will be a "taxable" obligation.

(h) The Tax Increment Note shall be a special and limited revenue obligation of the City and not a general obligation of the City, and only Available Tax Increments received by the City shall be used to pay the principal of and interest on the Tax Increment Note. [Note: See definition of "Available Tax Increments", above.]

(i) The Tax Increment Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit C. In the event of any conflict between the terms of the Tax Increment Note and the terms of this Section 3.3, the terms of the Tax Increment Note shall govern. No payments will be made on the Tax Increment Note during such time as there is a Specified Event of Default that has not been cured by the Developer.

(j) In connection with the issuance of the Tax Increment Note, and as conditions to such issuance, the Developer shall be provided with a Private Placement Memorandum and shall execute a receipt in a form acceptable to the City stating that it has relied on its own determinations in acquiring the Tax Increment Note and not on representations or information provided by the City.

(k) For purposes of this Agreement all project values shall be as valued by the City Assessor.

Section 3.4. Release and Indemnification Covenants.

(a) The Developer releases the City and the governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person for which a claim is made prior to the issuance of a Certificate of Completion and occurring at, about or in connection with the Development Property and/or Improvements, or the Developer's undertaking and completion thereof, or resulting from any defect therein, except to the extent such loss, damage or death is caused by the negligence or other wrongful acts of the Indemnified Parties. This paragraph (a) shall only apply to claims made prior to the issuance of a Certificate of Completion.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or negligence of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever brought prior to the issuance of a Certificate of Completion and arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Improvements; provided that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Project due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

(d) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

(e) This Agreement shall not create nor be construed to create any partnership, joint venture, agency, or employment relationship between the Parties.

Section 3.5. Intentionally left blank.

Section 3.6. Use of Tax Increments.

The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority: to make payments on the Tax Increment Note; and, after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

ARTICLE IV

Construction Of Minimum Improvements

Section 4.1. **Construction of Minimum Improvements.** The Developer agrees that it will cause the Minimum Improvements on the Development Property to be constructed. The Minimum Improvements shall consist of the construction of a 4-story multi-family building consisting of 90 units and parking for 92 vehicles plus additional surface parking for 21 vehicles.

The Improvements constructed by the Developer may, and are hereby permitted to and encouraged to, exceed in scope, scale and nature the Minimum Improvements. The Minimum Improvements constitute the lowest (or minimum) amount of Improvements which meet the development required to be provided hereunder by the Developer.

Section 4.2. **Commencement and Completion of Construction.** Subject to Unavoidable Delays, by December 31, 2023, the Developer shall have completed construction of the Minimum Improvements.

Time lost as a result of Unavoidable Delays shall be added to extend the completion date above beyond such date, a number of days equal to the number of days lost as a result of Unavoidable Delays.

The Developer agrees for itself, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall cause to be promptly begun and diligently prosecuted to completion construction of the Minimum Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.2. It is intended and agreed that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be, to the fullest extent permitted at law and in equity, binding for the benefit of the City and enforceable by the City against the Developer and its successors and assigns. Until construction of the Minimum Improvements has been completed, the Developer shall make reports to the City, in such detail and at such times as may reasonably be requested by the City, as to the actual progress of the Developer with respect to construction of the Minimum Improvements.

The Developer agrees that it shall permit designated representatives of the City to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction, after reasonable notice to Developer and at City's risk, to determine compliance with this agreement. This paragraph is not intended to apply to the customary building or code inspections by the City.

Section 4.3. **Certificate of Completion.** Promptly after completion of the Minimum Improvements in accordance with the provisions of this Agreement, the City will furnish the Developer with a Certificate of Completion, in substantially the form set forth in Exhibit F attached hereto. Such Certificate of Completion shall be a conclusive determination that the

Developer has fulfilled the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements.

If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 4.3, the City shall, within twenty (20) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such Certificate of Completion.

ARTICLE V

Insurance And Condemnation

Section 5.1. Insurance.

(a) The Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the City, furnish the City with proof of payment of premiums on:

(i) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis" in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy; the interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City;

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Worker's compensation insurance, with statutory coverage.

(b) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. The Developer will deposit upon the request of the City, but no more often than annually, with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. In lieu of separate policies, the Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

Section 5.2. Condemnation. In the event that title to and possession of the Improvements, or any material part thereof, but solely as to the Development Property and Improvements which the Developer retains ownership of, shall be taken in condemnation or by the exercise of the power of eminent domain by any governmental body or other person (except the City) prior to the Maturity Date the Developer shall, with reasonable promptness after such taking, notify the City as to the nature and extent of such taking.

ARTICLE VI

Intentionally left blank.

ARTICLE VII

Mortgage Financing

Section 7.1. **Limitation Upon Encumbrance of Property.** Prior to the completion of the Minimum Improvements, as certified by the City, neither the Developer nor any successor in interest to the Development Property or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Development Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Development Property, other than:

(a) except for the purpose of securing financing for the Development Property or Minimum Improvements, or all of them; and

(b) only if the City is given notice of such Mortgage in accordance with Sections 7.1 and 7.2.

Section 7.2. **Notice of Mortgage.** The Developer shall provide the City with a copy of the Mortgage and related note prior to the completion of the Minimum Improvements thereon.

Section 7.3. **Notice of Default; Copy to Mortgagee.** Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement for which the remedies of Sections 9.3 and 9.4 are available, the City shall at the same time forward a copy of such notice or demand to each holder of any Mortgage at the last address of such holder shown in the records of the City.

Section 7.4. **Mortgagee's Option to Cure Defaults.** After any breach or default referred to in Section 7.3, each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Development Property covered by its mortgage) and to add the cost thereof to the Mortgage debt and the lien of its Mortgage; provided, however, that if the breach or default is with respect to construction covered by the Mortgage, nothing contained in this Section or any other Section of this Agreement shall be deemed to require such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the work covered by the Mortgage (beyond the extent necessary to conserve or protect the work or construction already made), provided that any such holder shall not devote the Development Property or portion thereof to a use inconsistent with the Development Plan or this Agreement without the agreement of the City.

Section 7.5. **City's Option to Cure Default on Mortgage.** In the event that the Developer is in default under any Mortgage authorized pursuant to this Article VII, whether or not the holder of the Mortgage has given the Developer notice of such default, the Developer shall notify the City in writing of:

(a) the fact of the default;

(b) the elements of the default; and

(c) the actions required to cure the default.

If the default is an "Event of Default" under such Mortgage, which shall entitle such holder thereof to foreclose upon the Development Property covered by the Mortgage or any portion thereof, the Developer shall afford the City an opportunity to cure the "Event of Default" to the extent consistent with the Mortgage or permitted by the holder of the Mortgage upon request of the Developer, which request the Developer hereby covenants to make, within the time for cure provided by the Mortgage or within such longer reasonable time period as the holder shall deem appropriate. The City shall have no obligation to cure any such default.

ARTICLE VIII

Prohibitions Against Assignment And Transfer; Indemnification

Section 8.1. **Status of Developer; Transfer of Substantially All Assets.** As security for the obligations of the Developer under this Agreement, the Developer represents and agrees that prior to the earlier of the Maturity Date, the Developer will maintain its existence as a North Dakota limited liability company and maintain its authority to conduct business in the State of North Dakota and shall not consolidate with or merge into another entity and shall not dissolve or otherwise dispose of all or substantially all of its assets; provided that the Developer may consolidate with or merge into another entity or sell or otherwise transfer to a partnership or corporation organized under the laws of one of the United States, or an individual, all or substantially all of its assets as an entirety and thereafter dissolve and be discharged from liability hereunder if (i) the transferee partnership, corporation or individual assumes in writing all of the obligations of the Developer under this Agreement; and (ii) the City receives such new security from the successor Developer to assure completion of the Project and the fulfillment of the remaining obligations of this Agreement as the City deems necessary or desirable.

Section 8.2. **Prohibition Against Transfer of Property and Assignment of Agreement.** The Developer represents and agrees that prior to the issuance of the Tax Increment Note:

(a) Subject to Article VII and Section 8.2(c) of this Agreement, except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the relevant portion of the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City.

(b) Subject to Section 8.2(c), the City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the remaining obligations undertaken in this Agreement by the Developer with respect to the relevant portion of the Development Property.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed with respect to the relevant portion of the Development Property all of the remaining obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject

(unless the Developer agrees to continue to fulfill those obligations, in which case the preceding provisions of this Section 8.2(b)(ii) shall not apply); provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had, had there been no such transfer or change. In the absence of specific written approval by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) There shall be submitted to the City for review and prior written approval all pertinent instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII.

(c) Upon the furnishing of a Certificate of Completion pursuant to Section 4.4, notwithstanding any provisions to the contrary in this Article VIII, the Developer may sell or transfer such property or a portion thereof without any approval pursuant to Section 8.2(a) or (b).

Section 8.3. **Approvals.** Any approval of a transfer of interest in the Developer, this Agreement, or the Development Property or of a release of the Developer from its obligations hereunder required to be given by the City under this Article VIII may be denied only in the event that the City reasonably determines that the ability of the Developer to perform its obligations under this Agreement and its statutory duty, as owner, to pay ad valorem real property taxes assessed with respect to the Development Property, or any part thereof, or the overall financial security provided to the City under the terms of this Agreement, or the likelihood of the Minimum Improvements being successfully constructed and operated pursuant to the terms of this Agreement, will be materially impaired by the action for which approval is sought.

ARTICLE IX

Events of Default

Section 9.1. **Events of Default Defined.** The following are Events of Default under this Agreement:

(a) There shall have occurred a failure in the observance or performance in any material respect of any covenant, condition, obligation or agreement to be observed or performed under this Agreement.

(b) If any representation or warranty made by the Developer herein shall at any time prove to have been incorrect in any material respect as of the time made.

(c) If the Improvements are not substantially completed by December 31, 2023, as such time may be extended by Unavoidable Delays.

(d) If the holder of any mortgage on the Development Property or any portion thereof shall commence a legal action on the secured indebtedness or a foreclosure of its mortgage.

(e) If the Developer shall breach any warranties, covenants or other provisions of this Agreement not referred to in the foregoing provisions of this Section 9.1.

(f) The filing by the Developer of a voluntary petition in bankruptcy or the adjudication of the Developer as a bankrupt, the insolvency of the Developer or the filing by the Developer of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation resolution or similar relief under any present or future federal, state or other statutes, laws or regulations relating to bankruptcy, insolvency or other relief for debtors, or if the Developer seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator for itself or its property, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due.

(g) If the Developer shall not have available, and be able to demonstrate to the reasonable satisfaction of the City, sufficient funds to complete the Improvements and pay all costs thereof.

An Event of Default shall also include any occurrence which would with the passage of time or giving of notice become an Event of Default as defined hereinabove.

Section 9.2. **Remedies on Default.** Whenever any Event of Default occurs, in addition to all other remedies available to the City at law or in equity, the City (1) may without notice suspend its performance (other than the payment of the Tax Increment Note, except as provided below for a Specified Event of Default) under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer has cured its default and will continue its performance under this Agreement, and (2) may, after provision of sixty (60) days written notice to the Developer of the Event of Default, but only if the Event of Default has not

been cured within said sixty (60) days, or, if the Event of Default cannot be cured within sixty (60) days, the Developer does not provide assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible, terminate this Agreement, without further obligation whatsoever hereunder to the Developer.

Notwithstanding anything to the contrary stated in this Agreement, the City shall not exercise any remedies at law or in equity or under this Agreement upon an Event of Default by the Developer, other than the City's right to suspend its performance under this Agreement, until after provision of sixty (60) days written notice to the Developer of the Event of Default, but only if the Event of Default has not been cured within said sixty (60) days, or, if the Event of Default cannot be cured within sixty (60) days, the Developer does not provide assurances to the City reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible.

As a remedy for an Event of Default:

(a) The City may suspend or terminate payments on the Tax Increment Note, if the Event of Default is a Specified Event of Default.

(b) The City may withhold a Certificate of Completion.

(c) The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, to recover any damages or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the either Party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.4. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and has not been cured within sixty (60) days and the City shall employ attorneys or incur other expenses for the enforcement, performance or observance of any obligations or agreement on the part of the Developer contained herein, or for the identification and/or pursuit of any remedies or possible workouts of such default, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City. If an Event of Default cannot be cured within sixty (60) days, but the Developer has provided assurances to the City reasonably satisfactory to the City that the

Event of Default will be cured as soon as reasonably possible (as provided in Section 9.2), and the Developer does so cure said Event of Default in the manner as assured to the City, the Event of Default shall be deemed to have been cured within said sixty (60) days for purposes of this Section.

ARTICLE X

Additional Provisions

Section 10.1. **Titles of Articles and Sections.** Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 10.2. **Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by either Party to the other shall be sufficiently given or delivered if sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and,

(a) in the case of the Developer, to J-Street Properties, LLC, 505 N. Broadway, Suite 201, Fargo, ND 58102, and

(b) in the case of the City, to the City at 225 4th Street North, North Dakota 58102, Attention: Director of Strategic Planning and Research AND to the City at 225 North 4th Street, Fargo, North Dakota 58102, Attention: City Auditor;

or at such other address with respect to either such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.3. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original hereof.

Section 10.4. **Law Governing.** The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Dakota.

To the extent the ability of the City to perform any obligations under this agreement is impaired or limited by modifications in North Dakota law, as established either by the legislature or the courts, this agreement shall be interpreted and construed to maximize the fulfillment of such obligations under the law; however, no breach of this agreement may be deemed to occur as a result of such impairment or limitation

Section 10.5. **No Filing of Agreement.** The Parties agree that this Agreement shall not be filed against the Development Property, and each Party agrees that if it shall inadvertently cause or suffer this Agreement to be so filed, it will take such actions as may be necessary to remove, satisfy and render ineffective any such filing.

Section 10.6. **Modification.** If the Developer is requested by the holder of a Mortgage or by a prospective holder of a prospective Mortgage to amend or supplement this Agreement in any manner whatsoever, the City will, in good faith, consider the request with a view to granting the same unless the City, in its reasonable judgment, concludes that such modification is not in the public interest, or will significantly and undesirably weaken the financial security provided to the interests of the City by the terms and provisions of this Agreement.

Section 10.7. **Legal Opinions.** Upon execution of this Agreement, each party shall, upon request of the other parties, supply the other parties with an opinion of its legal counsel to the effect that this Agreement is legally issued or executed by, and valid and binding upon, such party, and enforceable in accordance with its terms.

Section 10.8. **Approvals; Officer Action.** Wherever in this Agreement the consent or approval of the City or Developer is required or requested, such consent or approval shall not be unreasonably withheld or unduly delayed (except to the extent that, as a remedy upon the occurrence of an Event of Default, the City is entitled to withhold its performance). Any approval, execution of documents, or other action to be taken by the City pursuant to this Agreement or for the purpose of determining sufficient performance by the Developer under this Agreement may be made, executed or taken by the Mayor of the City without further approval by the Board of City Commissioners of the City, to the extent permitted by law. The Mayor may, but shall not be required to, consult with other City staff with respect to such matters. Any approval, execution of documents, or other action to be taken by the City pursuant to this Agreement or for the purpose of determining sufficient performance by the Developer under this Agreement may be made, executed or taken by the Mayor without further approval by the Board of City Commissioners of the City, to the extent permitted by law. The Mayor may, but shall not be required to, consult with City staff with respect to such matters.

ARTICLE XI

Termination of Agreement; Expiration

Section 11.1. **City's Option to Terminate.** As provided and under the conditions specified in Section 9.2, the City may terminate this Agreement if an Event of Default shall have occurred hereunder and be continuing. Nothing in that or in this Section shall affect the City's right, should the City not so elect to terminate this Agreement and as recourse against the Developer, to insist on performance hereunder by the Developer.

Section 11.2. **Expiration.** This Agreement shall expire when the Tax Increment Note is paid in full or, if earlier, on the Maturity Date.

Section 11.3. **Effect of Termination or Expiration.** No termination or expiration of this Agreement pursuant to the terms hereof shall terminate (i) any rights or remedies of the City arising hereunder due to an Event of Default, or of the Developer arising hereunder due to a breach of this Agreement by the City, occurring prior to such termination or expiration or (ii) the provisions of Sections 3.5, 3.6 and 9.7 hereof.

Section 11.4. **No Third Party Beneficiaries.** There shall, as against the City, be no third party beneficiaries to this Agreement. More specifically, the City enters into this Agreement, and intends that the consummation of the City obligations contemplated hereby shall be, for the sole and exclusive benefit of the Developer, and notwithstanding the fact that any other "persons" may ultimately participate in or have an interest in the Improvements, the City does not intend that any party other than the Developer shall have, as alleged third party beneficiary or otherwise, any rights or interests hereunder as against the City, and no such other party shall have standing to complain of the City's exercise of, or alleged failure to exercise, its rights and obligations, or of the City's performance or alleged lack thereof, under this Agreement.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed by their duly authorized representatives.

CITY OF FARGO, NORTH DAKOTA

(SEAL)

By _____
Dr. Tim Mahoney, its Mayor

ATTEST:

By _____
Steven Sprague, City Auditor

This document drafted by:

Ian R. McLean
Assistant City Attorney
Serkland Law Firm
10 Roberts Street N.,
Fargo, ND 58108
701-232-8957

Execution Page to Developer Agreement between the above-named Party and J-Street Properties, LLC

J-Street Properties, LLC

By _____,
Kevin J. Bartram, President

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Dr. Tim Mahoney and Steven Sprague, the Mayor and City Auditor, respectively, of the City of Fargo, North Dakota, on behalf of said City.

Notary Public

STATE OF NORTH DAKOTA)
)ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Kevin J. Bartram, the President of J-Street Properties, LLC, a North Dakota limited liability company, on behalf of said company.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

The Development Property consists of the following properties located in the City of Fargo, Cass County, North Dakota:

That certain real property situate in the City of Fargo, County of Cass and State of North Dakota, more fully described as:

Lots Twenty-two to Twenty-three, in Block Twenty-two, of Reeve's Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota;

AND

All of Lots One through Six, inclusive, and all of Lots Twenty-four through Thirty-four, inclusive, Block Twenty-two of Reeve's Addition to Fargo, Cass County, North Dakota, EXCEPTING THEREFROM that portion of said Lot Twenty-four lying Easterly of a line drawn concentric with and distance of 9.0 feet Westerly, as measured radially from The Burlington Northern and Santa Fe Railway Company (formerly Northern Pacific Railway Company) spur track centerline, as now located and constructed upon, over and across said Block Twenty-two.

The property addresses are 1418 1st Ave. N. and 19 14th ½ St. N., Fargo, ND 58102.

EXHIBIT B

INTENTIONALLY LEFT BLANK.

EXHIBIT C
FORM OF TAX INCREMENT NOTE

No. R-__

\$ _____

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
CASS COUNTY
CITY OF FARGO

\$ TAX INCREMENT
REVENUE NOTE OF 2022
(TAX INCREMENT DISTRICT 2021-04 PROJECT)

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, Cass County, North Dakota (the "City"), certifies that it is indebted and for value received promises to pay to J-Street Properties, LLC, a North Dakota limited liability company (the "Developer"), or the registered assign, the principal sum of one million and three hundred thousand dollars and no/100 Dollars (\$1,300,000.00),, an amount issued in reimbursement of eligible costs paid by the Developer, unless due sooner by redemption or early payment, on the Maturity Date defined below; but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided; and to pay interest on the unpaid principal amount of this Note at the rate of interest of Three and One-half Percent (3.50%) per annum, compounded annually. Interest shall accrue from the date of this Note on the amount issued and shall be computed on the basis of a 360-day year consisting of 12 30-day months. This Note is the "Tax Increment Note" (the "Note") described and defined in that certain Developer Agreement, dated as of _____ (as the same may be amended from time to time, the "Developer Agreement"), by and between the City and J-Street Properties, LLC, a North Dakota limited liability company, as the initial Developer under the Developer Agreement. Each capitalized term which is used but not otherwise defined in this Note shall have the meaning given to that term in the Developer Agreement or in the resolution authorizing the issuance of this Note. Principal and interest are payable at such address as shall be designated in writing by J-Street Properties, LLC, or other registered holder of this Note, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

Payment Dates. Subject to the terms hereof, the principal of and interest on the Tax Increment Note shall in the aggregate be payable on May 15th following the date of issuance of the Tax Increment Note and on May 15th of each year thereafter until the Maturity Date, said May 15th dates being referred to herein as the "Payment Date" or collectively as the "Payment Dates".

Payment Amounts. On each Payment Date (or, if not a business day of the City, the first business day thereafter) the City shall pay by check or draft mailed to the person that was the Registered Owner of the Note at the close of the last business day of the City preceding such Payment Date an amount as follows: (a) the first payment on the Tax Increment Note, to become due and payable on the first Payment Date, shall be limited to all the Available Tax Increments received to said date by the City on the Project and (b) for all payments after said first payment on the Tax Increment Note, the amounts payable on the Tax Increment Note on each Payment Date shall be limited to the Available Tax Increments received by the City since the prior year's Payment Date. All payments made on the Tax Increment Note shall be applied first to pay accrued and unpaid interest on the Tax Increment Note and second toward payment of principal. To the extent that the Available Tax Increments are insufficient, through the Maturity Date, to pay all accrued and unpaid interest on and the principal of the Tax Increment Note, said unpaid amounts shall then cease to be any debt or obligation of the City or of the City whatsoever. In no event shall any City be obligated to remit payment of principal in excess of the aggregate amount of the unpaid principal of the Note. The City shall have the option at any time to prepay in whole or in part the principal amount of this Note at par plus accrued interest. All payments made by the City under this Note shall be applied first to pay accrued and unpaid interest on this Note and second toward payment of principal hereof.

Redemption. In addition to the amounts of principal required to be paid by the City as hereinabove set forth, the City shall have the right to prepay on any date the entire principal amount hereof then remaining unpaid, or such lesser portion thereof as it may determine upon, in multiples of \$1,000, at par plus accrued interest. Notice of any such optional prepayment shall be given prior to the prepayment date by mailing to the registered owner of this Note a notice fixing such prepayment date and the amount of principal to be prepaid.

Available Tax Increments. "Available Tax Increments" are defined in the Developer Agreement as follows:

"Developer Tax Increments minus the reasonable and not theretofore reimbursed actual expenses incurred by the City in establishing and maintaining the TIF District, in preparing and implementing this Agreement, and in general in administering the TIF District and this Agreement and any supplements hereto and in participating in the actions or transactions contemplated thereby and hereby." [[“Definition of Available Tax Increments”, in final form of this Note to be modified in accordance with the Development Agreement, as the same has been amended from time to time.]]

"Developer Tax Increments" are defined in the Developer Agreement as follows:

"The portion of Developer's Taxes which constitutes Tax Increments, or the portion of Tax Increments derived from Developer's Taxes."

"Tax Increments" are defined in the Developer Agreement as follows:

“Tax Increments” means those tax increments which the City shall be entitled to receive and retain, and which the City shall have actually received from Cass County, from time to time from the TIF District pursuant to the Urban Renewal Law.

In addition, “Developer’s Taxes” are defined in the Developer Agreement as follows:

“Developer's Taxes” means taxes paid with respect to the portions of the Development Property and Improvements completed by the Developer for the fifteenth (15th) Tax Year and earlier Tax Years. Taxes for the sixteenth (16th) year following the first Tax Year, or for any subsequent year, are not included as Developer’s Taxes..”

In addition, “Tax Year” is defined in the Developer Agreement as follows:

“Tax Year” is one of a maximum of fifteen (15) successive calendar years, with the first year being the year that, pursuant to this Agreement, the Tax Increment Note is issued and with the subsequent years being the fourteen (14) subsequent calendar years. The fifteenth (15th) Tax Year, therefore, is the fourteenth (14th) calendar year following the first said year. In addition, “Maturity Date” is defined in the Developer Agreement as follows:

“Maturity Date” means the date that is three (3) years from the Payment Date for the fifteenth Tax Year following the date of the issuance of the Tax Increment Note. In addition, Section 3.6 of the Developer Agreement provides as follows:

" The City receives the Tax Increments generated by the TIF District from the County. The City may use Tax Increments which are not Developer Tax Increments for any purpose permitted by law. Developer Tax Increments shall be used on any date of application for the following purposes in the following order of priority:

- (a) to make payments on the Tax Increment Note; and,
- (b) after payment of the City Development Costs and Tax Increment Note in full, to pay or reimburse redevelopment costs identified by the City and to pay other eligible expenses for other projects that may be approved for the TIF District, from time to time, by the governing body of the City.

No Payment Upon Default. No payments will be made on this Note during such time as there is an Event of Default under the Developer Agreement which has not been cured by the Developer.

Lack of Protective Covenants. The City of Fargo, North Dakota (the "City"), has not covenanted to endeavor in any fashion to cause Tax Increments to be sufficient to generate Available Tax Increments sufficient to pay this Note, nor have they covenanted to take actions under the Developer Agreement with such sufficiency as a goal.

Sufficiency of Revenues. The City makes no representation or covenant, express or implied, that the revenues described herein will be sufficient to pay, in whole or in part, the amounts which are or may otherwise become due and payable hereunder. Any amounts which have not become due and payable on this Note on or before the Maturity Date shall no longer be payable, as if this Note had ceased to be any debt or obligation of the City or of the City whatsoever.

Issuance; Purpose; Special Limited Obligation. This Note is in the aggregate principal amount of \$1,300,000 (the "Note"), which Note has been issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota including North Dakota Century Code Chapter 40-58, for the purpose of providing money to finance certain eligible costs within the City's Urban Renewal District 2021-04, specifically the costs identified in Section 3.3 of the Developer Agreement. The Notes are payable out of the Tax Increment Revenue Note of 2021-04 Fund of the City, to which have been pledged amounts representing Available Tax Increments to be received by the City from the City's 2021-04 Tax Increment District in the City. This Note is not any obligation of any kind whatsoever of any public body, except that this Note is a special and limited revenue obligation but not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications and limitations stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City or of the City are pledged to or available for the payment of the principal of or interest on this Note, and no property or other asset of the City or of the City, save and except the above referenced Available Tax Increments, is or shall constitute a source of payment of the City's obligations hereunder.

Limitation on Transfer. This Note may only be transferred to a person who is (1) a successor of J-Street Properties, LLC, by reorganization, merger or acquisition, (2) a member of J-Street Properties, LLC, (3) a related person to such member or successor, (4) a "qualified institutional buyer" as defined in Rule 144A promulgated under the federal Securities Act of 1933, or (5) an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) promulgated under the federal Securities Act of 1933. The City shall not register any transfer of this Note unless (i) a registered owner's prospective transferee delivers a representation letter in form satisfactory to the City verifying that the transferee is a "qualified institutional buyer"; or (ii) such transferee is an "accredited investor" which has delivered a representation letter in form satisfactory to the City; or (iii) the prospective transferee demonstrates to the satisfaction of the City that it is the successor, partner or related person to J-Street Properties, LLC, noted above.

Any registered owner desiring to effect a transfer shall, and does hereby, agree to indemnify the City against any liability, cost or expense (including attorneys' fees) that may result if the transfer is not so made.

Registration; Transfer. This Note shall be registered in the name of the payee on the books of the City by presenting this Note for registration to the officer of the City performing the functions of the Treasurer, who will endorse his or her name and note the date of registration opposite the name of the payee in the certificate of registration on the reverse side hereof. Thereafter this Note may be transferred to a bona fide purchaser who is a permitted transferee

only by delivery with an assignment duly executed by the registered owner or his, her or its legal representative, and the City may treat the registered owner as the person exclusively entitled to exercise all the rights and powers of an owner until this Note is presented with such assignment for registration of transfer, accompanied by assurance of the nature provided by law that the assignment is genuine and effective, and until such transfer is registered on said books and noted hereon by the Treasurer of the City.

Developer Agreement. The terms and conditions of the Developer Agreement are incorporated herein by reference and made a part hereof. The Developer Agreement may be attached to this Note, and shall be attached to this Note if the holder of this Note is any person other than J-Street Properties, LLC. No payments will be made on this Note during such time as there is a Specified Event of Default under the Developer Agreement which has not been cured by the Developer.

Taxable Obligation. This Note is intended to bear interest that is included in the gross income of the owner.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to happen and to be performed, precedent to and in the issuance of this Note, have been done, have happened and have been performed, in regular and due form, time and manner as required by law; and that this Note, together with all other debts of the City outstanding on the date hereof, being the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, the City of Fargo, Cass County, North Dakota, by its Board of City Commissioners has caused this Note to be executed on its behalf by the signature of its Mayor and attested by the signature of the City Auditor, all as of _____, 2022.

CITY OF FARGO, CASS COUNTY, NORTH
DAKOTA

By: _____
Dr. Tim Mahoney, its Mayor

ATTEST:

Steven Sprague, City Auditor

(SEAL)

CERTIFICATE OF REGISTRATION

The transfer of ownership of the principal amount of the attached Note may be made only by the registered owner or his, her or its legal representative last noted below.

DATE OF
REGISTRATIONREGISTERED OWNER

SIGNATURE OF
AUTHORITY'S TREASURER

J-Street Properties, LLC

, 2022

EXHIBIT D
INTENTIONALLY LEFT BLANK

EXHIBIT E

INTENTIONALLY LEFT BLANK.

EXHIBIT F

CERTIFICATE OF COMPLETION

WHEREAS, the City of Fargo, North Dakota, a municipal corporation, (the "City") and J-Street Properties, LLC, a North Dakota limited liability company (the "Developer") have entered into an agreement dated as of the ____ day of _____, 2022; and

WHEREAS, the Developer has to the present date performed said covenants and conditions insofar as it is able in a manner deemed sufficient by the City to permit the execution and recording of this certification:

NOW, THEREFORE, this is to certify that all building construction and other physical improvements specified to be done and made by the Developer have been completed, and the above covenants and conditions in said Developer Agreement have been performed by the Developer therein, and that the Tax Increment Note, referred to in said Developer Agreement, may be issued to Developer by the City.

CITY OF FARGO, NORTH DAKOTA

By: _____
Dr. Tim Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

Signature page to the Certificate of Completion of the City of Fargo, North Dakota.

EXHIBIT G
INTENTIONALLY LEFT BLANK.

EXHIBIT H
FORM OF LEGAL OPINION OF DEVELOPER'S COUNSEL

[Fargo]

Re: Development Agreement by and between the City of Fargo, North Dakota, and J-Street Properties, LLC

Gentlemen:

As counsel for J-Street Properties, LLC (the "Company"), and in connection with the execution and delivery of a certain Developer Agreement (the "Development Agreement") dated as of _____, between the Company and the City of Fargo, North Dakota (the "City"), we hereby render the following opinion:

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the following:

- (a) The Articles of Organization and Operating Agreement of the Company;
- (b) Minutes relating to the meetings of the Board of Governors or any other managing committee of the Company at which action was taken with respect to the transactions covered by this opinion;
- (c) The Development Agreement;
- (d) and such other documents and records as we have deemed relevant and necessary as a basis for the opinion set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. The Company has been duly organized and is validly existing as a limited liability company under the laws of the State of North Dakota and is qualified to do business in the State of North Dakota. The Company has full power and authority to execute, deliver and perform in full the Development Agreement; and the Development Agreement has been duly and validly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery by the other parties thereto, is in full force and effect and is a valid and legally binding instrument of the Company enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The consummation of the transactions contemplated by the Development Agreement, and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under, the articles of organization, member control agreement or operating agreement of the Company or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which the Company is a party or by which it or its property is bound or subject, and do not constitute a loan to the Company.

3. The undersigned has provided an opinion to the Company that the Development Agreement is in accordance with North Dakota state law, including N.D.C.C. Chapter 40-58, and is a binding and enforceable agreement. A copy of such opinion, fully dated and executed, is in turn attached to this opinion.

Very truly yours

Erik R. Johnson
City of Fargo
Assistant City Attorney

27

March 17, 2022

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

RE: Term Limits matters including city-wide vote

Dear Commissioners,

Your consideration and action on three related matters is hereby requested.

Ordinance Repealing F.M.C. §2-0106 – 2nd Reading and Final Passage. The ordinance to repeal the existing term limits ordinance, thereby allowing a proposed replacement term limits ordinance to be voted upon at the June 14th city election, has received “first reading” at your last regular meeting on March 7th and, therefore, it is ready for second reading and final passage.

Resolution Placing Ordinance on Ballot. Enclosed for your approval is a resolution that will place the proposed new term limits ordinance on the ballot for the June 14, 2022, city election. Please note that the language of the proposed term limits ordinance, as discussed at your February 22nd meeting, is contained within the resolution. This resolution should be considered for approval only after the “repealing ordinance” has received final passage. (It wouldn’t make sense to propose a new term limits law if the City Commission were not to repeal the existing law.)

Ballot Language. City Auditor Sprague and I have worked together to prepare the enclosed draft ballot for the term limits ordinance to be voted upon in the June 14th city election. While we welcome the City Commission’s input and comments, since it is the role of the City Auditor to prepare the ballot language and submit it to the County Auditor, the suggested motion is simply to receive and file the sample ballot.

SUGGESTED MOTION NO. 1 (Waiver of 2nd Reading of Repealing Ord): I move to waive second reading, in full, and to approve final passage of An Ordinance Repealing Section 2-0106 of Article 2-01 of Chapter 2 of the Fargo Municipal Code Relating to Term Limits for City Commission Members.

SUGGESTED MOTION NO. 2 (Resolution): I move to approve the Resolution proposing a term limits ordinance to be placed before the city voters at the June 2022 election.

SUGGESTED MOTION NO. 3 (Sample Ballot Language): I move to receive and file the City Auditor's proposed draft ballot language regarding the term limits ordinance to be voted upon at the June 14, 2022 election.

Sincerely,

A handwritten signature in cursive script that reads "Erik R. Johnson". The signature is written in dark ink and is positioned above the printed name and title.

Erik R. Johnson
Assistant City Attorney

Enclosures

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

27

1 AN ORDINANCE REPEALING SECTION 2-0106 OF
2 ARTICLE 2-01 OF CHAPTER 2 OF THE FARGO
3 MUNICIPAL CODE RELATING TO TERM LIMITS FOR CITY
4 COMMISSION MEMBERS

5 WHEREAS, the Board of City Commissioners desires to place the question of city
6 commission term limits before the city electorate at the June 14, 2022, city election; and,

7 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to repeal
8 the City's existing term limits ordinance, Section 2-0106 of the Fargo Municipal Code, so that the
9 city electorate is then allowed to vote whether or not to approve a proposed term limits ordinance;
10 and,

11 WHEREAS, it is further the desire of the Board of City Commissioners that the proposed
12 new term limits ordinance to be voted upon by the city electorate is to apply to existing, seated
13 members of the Board and, therefore, that said repeal take effect immediately prior to the date that
14 the proposed new term limits ordinance will take effect, without any interruption in the succession
15 of terms of any of the existing, seated members; and,

16 WHEREAS, according to Section 1-0210 of the Fargo Municipal Code, the City's
17 procedure for passing ordinances by city electorate, if there are a majority of "yes" votes of those
18 members of the city electorate voting on the matter, the new term limits ordinance shall become
19 effective ten days after the election results are certified, and, therefore, it is the desire of the Board
20 of City Commissioners that this repeal become effective immediately prior to the tenth day after
21 the election results are certified;

22 NOW, THEREFORE,

23 Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Repeal.

Section 2-0106 of Article 2-01 of Chapter 2 of the Fargo Municipal Code is hereby
repealed in its entirety.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date. This ordinance shall be in full force and effect upon the expiration of the ninth day after the results of the June 2022 city election are certified.

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

27a

COMMISSIONER _____ introduced the following resolution and moved its adoption:

RESOLUTION

WHEREAS, Fargo Municipal Code Section 1-0210 authorizes the board of city commissioners to submit proposals for enactment of an ordinance to the city voters; and

WHEREAS, the board of city commissioners finds it desirable and appropriate to propose for city-wide vote an ordinance establishing certain limitations on the number of consecutive terms in office that a member of the city commission may serve; and,

WHEREAS, an existing city ordinance establishing term limits having been repealed by the board of city commissioners;

NOW, THEREFORE, BE IT RESOLVED that an ordinance establishing term limits for members of the city commission be proposed to the voters as follows:

Section 1. Enactment.

2-0106. Limitation on terms.--No member of the board of city commissioners may serve more than three (3) successive four-year terms; provided, that such term limitation shall be subject to the following:

- A. Any member elected to a term of less than four years as a result of a vacancy on the board shall be eligible to serve three additional four-year terms and any such partial term or terms shall not be deemed to interrupt a succession of four-year terms.
- B. Any member who has completed three successive four-year terms shall not be eligible for reelection until the next regular election following the expiration of such member's third successive term.
- C. Any member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms.

Section 2. Effect on Seated Members of City Commission.

In addition to being applicable to future members of the board of city commissioners, this ordinance shall also be applicable to any members of the board of city commissioners holding office at any time during the period of January 1st through July 1st, 2022.

Section 3. Effective Date.

This ordinance shall become effective ten days after the election results have been certified.

BE IT FURTHER RESOLVED that said proposed ordinance be placed before the voters at the city election to be held June 14, 2022.

Mayor

Attest:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof: COMMISSIONERS _____.

The following were absent and not voting: _____,
and the following voted against the same: _____,
whereupon the resolution was declared duly passed and adopted.

CERTIFICATE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true, and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on Monday, _____, 2022, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this _____ day of _____, 2022.

City Auditor

(S E A L)

276

TERM LIMITS ORDINANCE

SAMPLE BALLOT FOR JUNE 14, 2022 CITY ELECTION

Shall a Fargo city ordinance establishing certain term limits be enacted, in which no member of the board of city commissioners may serve more than three (3) successive four-year terms and in which any member who has served in the capacity of mayor, as well as city commissioner, may not serve more than four (4) successive four-year terms, all as provided in the Notice of Proposed Fargo City Ordinance as published in THE FORUM on the _____ day of _____, 2022?

Shall such ordinance be approved?"

☐ Yes

☐ No

28

March 14, 2022

Honorable Board of
City Commissioners
City of Fargo
225 North Fourth Street
Fargo, ND 58102

Re: 32nd Ave S Reconstruction Project – 32nd St S to 22nd St S
City of Fargo Improvement District No. BR-22-A1
NDDOT Project No. SU-CVD-8-984(168)

Dear Commissioners:

As you likely recall, bids were opened by the NDDOT on Friday, February 11, 2022 for the 32nd Avenue South Reconstruction project. Three bids were received and all three bids were more than 40% over the Engineer's Estimate. There are Special Assessments associated with this project and State Law states that the City must reject bids when the low bid is more than 40% over the Engineer's Estimate.

City staff and the City's Consulting Engineer met with representatives from each of the three Contractors that bid the project to better understand why bid prices were as high as they were. We have evaluated the Contractor's feedback and have developed three options for the City Commission to consider.

Recommended Motion:

Proceed with revising plans for Option 3: Detour Traffic for City of Fargo Improvement District No. BR-22-A1 and direct the Engineering Department to rebid the project.

Respectfully Submitted,



Tom Knakmuhs, P.E.
Assistant City Engineer

CITY OF FARGO POLICE DEPARTMENT



Chief David B. Zibolski

105 25th Street North, Fargo, North Dakota 58102

Office: 701-241-1400 Fax: 701-297-7789

www.fargopolice.org
APPROVED BY THE BOARD
OF CITY COMMISSIONERS

November 9, 2021

Board of City Commissioners
City Hall
225 4th Street N.
Fargo, ND 58102

R/F- 11-15-21
11/29/21 - Delay 90 days

RE: Wildlife Management Program

Dear Commissioners,

On June 1, 2021, I brought forward to you my public safety concerns regarding the continuation of the Fargo Wildlife Management Program. This program was created in City ordinance #12-04 in 2006 and identified the Fargo Police Department as the oversight department. I was directed to hold a public hearing regarding this program, which would take input regarding public safety and the future of the program in terms of its structure, operations, and oversight. The public hearing was held on June 24, 2021, and the findings were presented to the Commission during our regular meeting on June 28, 2021.

As a result of the input from the public hearing I requested, and the Commission approved, the creation of a study group to review the public safety concerns, as well as operations, structure and oversight of the Wildlife Management Program. This group contained members from the Fargo Parks District and the North Dakota Game and Fish Department. The study group's initial findings failed to address in any meaningful way the public safety concerns expressed during the June 1st meeting. I asked for the study group to reconvene to look at that concern. On July 21, 2021, the City Commission approved the Wildlife Management Program for 2021-2022 allowing any future study group recommendations to be implemented.

Subsequent to a second meeting of the study group, no significant public safety issues were addressed. Since the completion of the study group's work, I have received a packet of petitions containing signatures of over 300 persons, both city residents as well as Fargo-Moorhead regional residents who regularly utilize our parks system. These petitions were signed supporting the elimination of the Wildlife Management Program due to concerns by these citizens regarding their safety. This information has also been publicly presented at recent Commission Hearings by members of the public.

ADMINISTRATION
Phone: 701-241-1427
Fax: 701-297-7789

INVESTIGATIONS
Phone: 701-241-1405
Fax 701-241-1407

RECORDS
Phone: 701-241-1420
Fax: 701-241-8272

NON EMERGENCY
Phone: 701-235-4493

In terms of operation and oversight of the Wildlife Management Program, neither the North Dakota Game and Fish Department nor the Fargo Parks District had any interest in taking over the program. On November 8, 2021, I spoke with Parks District Director, David Leker, who informed me that the Parks Commission Board had also received numerous petitions advocating elimination of the program due to public safety concerns. He informed me that if the City of Fargo eliminated the program, he did not believe the Parks District would in any way have an interest in taking it over.

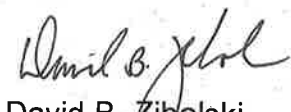
In summation, the Wildlife Management Program creates an easy method for a very small amount of hunters (no more than 45) to hunt areas mostly within the city during specific times. As you are aware, the city has grown greatly in population and in usage of our beautiful parks and recreation areas since 2005. This brings with it an obvious conflict in terms of community members' ability to safely utilize our park system with those who wish to utilize our parks system to hunt deer and turkey with a bow and arrow. There is substantial public land opportunities within the Fargo area for bow and arrow hunters to otherwise safely hunt deer. Therefore, the elimination of this program would in no way take away the hunting abilities of the 45 applicants. However, continuation of the program, based on public input received, is having an adverse effect on public usage of our public park and recreation areas, and creates an unnecessary public safety risk.

Recommended Motion

Repeal Ordinance #12-04, which would eliminate the City's Wildlife Management Program effectively at the conclusion of the 2021-2022 hunting period.

Please contact me if you need any additional information.

Respectfully,



David B. Zibolski
Chief of Police



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

March 27, 2021

Board of City Commissioners
City Hall
225 Fourth Street North
Fargo, ND 58102

RE: An Ordinance Repealing Article 12-04 Relating to Wildlife Management Program Regulations

Dear Commissioners,

Enclosed for your approval is an ordinance repealing Article 12-04 relating to wildlife management program regulations. Mayor Mahoney asked Chief Zibolski to research and report on the efficiency of the program, which began in 2006. The program allowed 45 applicants to hunt deer and turkey within several identified areas adjacent to the Red River with the goal of reducing vehicular crashes due to the surplus of deer and turkeys. Chief Zibolski found that it was unlikely the program has had any significant impact on the number of deer and turkeys within city limits and is no longer an effective program for the following reasons:

- Harvest rates are low;
- An increase in city population now places many identified hunting areas within or adjacent to bike paths and a large number of people and pets; and
- Public safety responsibilities have increased due to the City's population growth, so law enforcement time could be spent elsewhere rather than on program oversight and compliance checks.

As a result of the Chief's report, Mayor Mahoney directed the City Attorney's Office to work with the Fargo Police Department to review and repeal the City's ordinance on this subject. As a result, I am remitting to you for your approval, an ordinance repealing Article 12-04 of the Fargo Municipal Code.

Suggested Motion: I move to receive and file an ordinance repealing Article 12-04 of Chapter 12 of the Fargo Municipal Code relating to wildlife management program regulations and to place the ordinance on for first reading at the next regularly-scheduled city commission meeting.



Please feel free to contact me or Chief Zibolski if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Alissa Farol". The signature is fluid and cursive, with the first name "Alissa" and last name "Farol" clearly distinguishable.

Alissa R. Farol
Assistant City Attorney

Enc.

cc: Chief David Zibolski, Fargo Police Department

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE REPEALING ARTICLE 12-04 OF CHAPTER 12
2 OF THE FARGO MUNICIPAL CODE RELATING TO WILDLIFE
3 MANAGEMENT PROGRAM-REGULATIONS

4 WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in
5 accordance with Chapter 40-05.1 of the North Dakota Code; and,

6 WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City
7 shall have the right to implement home rule powers by ordinance; and,

8 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said
9 home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict
10 therewith and shall be liberally construed for such purposes; and,

11 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
12 implement such authority by the adoption of this ordinance;

13 NOW, THEREFORE,

14 Be It Ordained by the Board of City Commissioners of the City of Fargo:

15 Section 1. Repeal.

16 Article 12-04 of Chapter 12 of the Fargo Municipal Code is hereby repealed in its
17 entirety.
18
19
20
21
22
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date.

This ordinance shall be in full force and effect from and after its passage and approval.

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:

30

March 17, 2022

MEMORANDUM

To: Board of City Commissioners
From: Dr. Timothy Mahoney, Mayor & Finance/Auditors Liaison City Commissioner
Bruce Grubb, City Administrator
Michael Redlinger, Assistant City Administrator
Re: Recommendation for Interim Finance Director Appointment

Finance Director Kent Costin has announced his retirement effective at the close of business on April 1, 2022. In the interim period before a new Finance Director is in place, the City of Fargo desires to designate an Interim Finance Director. It is the recommendation of the Mayor and City Administration that Steve Sprague be appointed Interim Finance Director until the start date of the permanent Finance Director. Mr. Sprague has served in the position of City Auditor since December 13, 1999 and works closely with the Finance Department team.

The liaison City Commissioner to Finance/Auditors assembled a staff selection committee consisting of the following:

Tim Mahoney, Liaison Commissioner
Jill Minette, Human Resources Director
Terry Hogan, DEI Director
Julie Bommelman, Transit Director
Jamie Bullock, Finance Manager

Susan Thompson, Fargodome Finance Director
Ron Gronneberg, Chief Information Officer
Bruce Grubb, City Administrator
Michael Redlinger, Assistant City Administrator

The selection process was extended from the original schedule due to difficulties in receiving applications from qualified candidates. A tentative schedule for the selection process is outlined below:

Virtual Interviews
In-Person Interviews
Committee Selection of Preferred Candidate
City Commission Approval of Preferred Candidate

March 21, 2022
Week of March 28, 2022
Week of March 28, 2022
TBD

Steve Sprague is not a candidate for the position of Finance Director.

SUGGESTED MOTION:

Appoint City Auditor Steve Sprague as Interim Finance Director at a Grade 24, Step 5, effective at close of business on April 1, 2022.

C: Jill Minette, Director of Human Resources
Camila Van Dyke, Human Resources Manager
Steve Sprague, City Auditor



ARLETTE PRESTON, CITY COMMISSIONER

Fargo City Hall
225 4th Street North
Fargo, ND 58102-4817
Phone: 701.715.2862 | Fax: 701.476.4136
www.FargoND.gov

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: CITY COMMISSIONER ARLETTE PRESTON

DATE: MARCH 17, 2022

SUBJECT: RESOLUTION REGARDING BUSINESSES AND INVESTMENTS WITH CONNECTIONS TO RUSSIA

Enclosed is a resolution addressing the City of Fargo's investments in Russian businesses and contracts the City has with companies who are still operating in Russia.

SUGGESTED MOTION: To adopt the attached Resolution entitled RESOLUTION TO SHOW SUPPORT FOR UKRAINE'S FIGHT FOR DEMOCRACY.

RESOLUTION TO SHOW SUPPORT FOR UKRAINE'S FIGHT FOR DEMOCRACY

WHEREAS, Fargoans have family and friends who are caught in the conflict in Ukraine or are fleeing Ukraine; and

WHEREAS, The Russian invasion into Ukraine has been a horrible event for all to watch over the past weeks; and

WHEREAS, The City of Fargo contracts for services with Baker Tilly and with potential other companies which continue to do business in Russia; and

WHEREAS, The United States has placed heavy sanctions on Russian businesses, oligarchs and political leaders to inflict economic pain in an effort to stop the Russian aggression; and

WHEREAS, The State of North Dakota is removing investments from Russian companies in order to defund the Russian aggression; and

WHEREAS, Ukraine is fighting with all their might to save their democracy.

NOW, THEREFORE, BE IT RESOLVED, That the City of Fargo will communicate to Baker Tilly urging them to pull their business out of Russia until the day the Russian military and political appointees leave Ukraine.

FURTHERMORE, The Fargo City Commission will direct staff to identify all businesses with which we have a contractual relationship still doing business with Russia and communicate the same.

FURTHERMORE, The City Commission will direct staff to examine any and all City investments for ties to Russian companies and disinvest in those companies.

Mayor

Attest:

City Auditor